145-578

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 166.

JOSEPH OTERI, APPELLANT,

vs.

VINCENZO SCALZO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 8, 1888.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

V. SCALZO *et als.*, Appellee-,
vs.
JOSEPH OTERI, Appellant. } No. 11059.

W. S. Benedict, attorney for appellee-.
Hornor & Lee, " " appellant.

Transcript of Appeal.

Appeal returnable to the Supreme Court of the United States of America, at the city of Washington, D. C., on the second Monday of October, A. D. 1888.

1 *Bill of Complaint. Filed June* 11, 1885.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

To the hon. the United States circuit court for the fifth judicial circuit and eastern district of Louisiana:

Vincenzo Scalzo and the firm of Randazzo & Di Christina, composed of Vincenzo Randazzo and A. Di Christina, alien subjects of the Kingdom of Italy, bring this their bill of complaint against Joseph Oteri, a citizen of the State of Louisiana, residing within this district, and for cause show:

"First." That on the 24th day of June, 1884, your orators, by act before James Fahey, notary, made part hereof, entered into a contract of copartnership with Joseph Oteri, of this city, in which it was agreed:

"1." They should carry on a general commission business and import fruits from Europe.

"2." The firm should be carried on under the firm name of Joseph Oteri & Co.; should commence business on 1st July, 1884, and continue for two years, unless sooner dissolved by mutual consent.

"3." Each partner contributed in cash the sum of five thousand dollars, and the profits and losses should be divided in thirds.

2 "4." Any extra capital required was to be furnished by Joseph Oteri at eight per cent. interest.

"5." That proper books should be kept and trial balances be taken monthly; that only one-half of the yearly profits should be drawn by the partners, and two per cent. of net profits as extra compensation should be paid A. Di Christina.

"Second." Your orators further allege that three members of said firm, viz., Vincenzo Scalzo, Joseph Oteri, and A. Di Christina, went to Europe thereafter—in the summer of 1884—to make arrangements for such copartnership business, and, after various contracts had

been made in the firm name for such business, your orator Vincenzo Scalzo was authorized by his copartners to remain a longer period of time to make additional contracts, which he did.

"Third." Orators show that thereafter consignments under said contracts coming to said Joseph Oteri & Co., same were declined by said Joseph Oteri against the protest of orators, who were obliged to care for and protect the same.

"Fourth." Orators show that on the 7th October, 1884, said Joseph Oteri, in violation of said contract of copartnership (and with malice, without cause, probable or otherwise, and in bad faith, for which orators reserve their action for damages), after said contracts had been made in good faith for said firm, and before any partnership, assets, or capital had been used, wrote to Costarelli & Co. and Joseph Ballero & Co., of Messina, and G. C. Heizel, of Palermo, and
3 others that all contracts made for such firm should enure to his private benefit, and he would not recognise his firm therein.

"Fifth." Orators show that said Joseph Oteri has refused to make or cause to be made, as the general manager of the affairs of the firm, the monthly trial balance agreed upon in said contract, notwithstanding the demand of your orators.

"Sixth." Orators shows that, notwithstanding said Joseph Oteri has refused to recognize orators as his partners and has refused to do business in the firm name, he has vilified and traduced the character of your orators, injured their credit and business reputation, and refused to carry out contracts for said firm made with his knowledge and consent, but also still holds, uses, and profits by the money of your orators in his hands, amounting to the sum of ten thousand dollars, and refuses to return same to your orators, although duly demanded, and has been placed in default therefor, and they are entitled to be refunded their said capital, with legal interest from 24th June, 1884, and they now make demand therefor.

"Seventh." Orators show that, apart from the acts of said defendant in refusing the various consignments made said firm under their contracts in Europe, they were not aware until a short time since of the fraudulent act of said Joseph Oteri in declining and refusing to carry on said contract of copartnership.

"Eight." Orators further show that prior to the filing of this bill and after due demand had been made of said defendant, as follows, viz:
4 "1." An account of which was not given; and after demand for the capital paid in by your orators had been made, defendant made a reply that several vessels would arrive, and he would require further capital from your orators; that one of said vessels did arrive, instructions were given for a sale of its cargo so sent to said firm, and said Joseph Oteri then declined to attend to the interests of said firm in said cargo, involving your orators in loss and damage to the consignors in a large sum of money, and they were obliged to protect said consignment to save themselves from further loss, the proceeds thereof being paid over to said Joseph Oteri for transmission to the consignor.

"Ninth." That your orators are not aware what has been done, what profits have been made, or where or how (if at all) the partnership funds were invested, and said defendant declines to give any knowledge of and concerning the same; but they aver, from information received, that said Joseph Oteri has converted the funds of your orators to his own use, and has not held the same to the credit of the partnership, and said capital should be deemed to be taken to be a part of the assets of the partnership liable to the claims of the creditors thereof (if any exists) or be refunded to your orators, with interest, if no creditors exist.

To the end therefore—

"1." That a receiver may be appointed to take charge of all partnership books and papers and account-, goods, and effects, and to collect the debts due thereto, and to preserve and dispose of the same under the direction of the court.

"2." That said Joseph Oteri may be required to bring into this court, to be deposited to the credit of this cause, the aforesaid sum of fifteen thousand dollars and such other sum as may be in his hands arising from profits thereof or thereon, either in the business of said copartnership (if any) or from the use thereof by said Joseph Oteri.

"3." That the said Joseph Oteri may by injunction be restrained from using the name of said copartnership, negotiating any bill or note in said copartnership name, or contracting any debt whatsoever on account thereof, or in any manner intermeddling therewith.

"4." That said partnership may be decreed to be dissolved as if the same had never been made by reason of the acts of said defendant; that an account of its business may be taken under the direction of this court, and that its legal liabilities may be paid and charged against the said Joseph Oteri, and that the capital of your orators, with interest, restored to them in the premises or otherwise at the discretion of the court.

"5." That your orators may have such other and further relief as the case may require.

May it please your honors to grant unto your orators a writ of subpœna, directed to said Joseph Oteri, commanding him to appear before this court, at some certain day to be named therein, and to answer the premises and abide by and perform such decree as may be passed therein.

(Signed) W. S. BENEDICT, *Solicitor.*

Ignacio Randazzo, being duly sworn, deposes and says that he is one of the orators named in the foregoing bill, and that the matters and facts in the foregoing bill are true as stated of his own knowledge, and those stated on information and belief he believes to be true, and that his co-orators are absent from the State.

(Signed) I. RANDAZZO.

Sworn to and subscribed before me this 10th day of May, 1885.

AMEDEE DUCATEL.

Demurrer. Filed Aug. 3, 1885.

United States Circuit Court, Eastern District of Louisiana. In Chancery.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

The demurrer of Joseph Oteri, defendant, to the bill of complaint of Vincenso Scalzo *et als.*, complainants.

The defendant, by protestation, not confessing all or any of the matters and things in the said complainants' bill contained to be true in such matter and form as the same are therein set
7 forth, demurs to said bill, and for cause of demurrer shows that complainants have not by their said bill made such a case as entitles them to the relief prayed as to the matters contained in the said bill or any of such matters.

Wherefore and for divers other good causes of demurrer appearing in said bill the defendant demurs thereto, and he prays the judgment of this hon. court whether he shall be compelled to make any further or other answer to said bill, and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

(Signed) JOSEPH P. HORNER,
F. W. BAKER,
Sol's for Def.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } *ss:*

Joseph Oteri, defendant in the above-entitled cause, being duly sworn, says that the foregoing demurrer is not interposed for delay.

(Signed) JOSEPH OTERI.

Sworn to and subscribed before me this 14th day of July, 1885.

[SEAL.] JAMES FAHEY, *Not. Pub.*

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) JOSEPH P. HORNOR,
Of Counsel.

8 *Order Overruling Demurrer.*

Extract from Minute Book.

JANUARY 9TH, 1886.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

This cause came on to be heard on the demurrer to the bill herein, Joseph P. Hornor and F. W. Baker, for demurrer; W. S.

Benedict, for demurrants, and was argued by the counsel for the parties respectively; whereupon and upon consideration thereof it was ordered that the demurrer be overruled.

Answer and Five Exhibits. Filed Jan'y 20, 1886.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

To the hon. the judges of the circuit court of the United States for the eastern district of Louisiana:

9 The answer of Joseph Oteri, defendant, to the bill of complaint of V. Scalzo and Randazzo and Di Christina, *and* complainants.

This defendant, now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith:

"1." That as to the matters and things contained in the first article of said bill he admits that he formed a partnership with the complainants by public act before James Fahey, not. pub., on 24th June, 1884, but that the agreements alleged by complainants to have been made in said act are but partially and imperfectly and untruly set forth in said article, and the true agreements made in said act are truly to be found therein, and this defendant annexes thereto a certified copy of said act of partnership and prays that it be taken as a part of this answer, and it thereby appears, among other things, as follows:

"Third. It is hereby furthermore agreed that said Oteri shall be the manager of said firm and as such have the exclusive control and direction of its affairs; also of signing all documents of whatsoever nature or kind, without any exception or reservation whatsoever, pertaining to the business of the said firm, and be, as he is alone, entitled to sign the name of said firm on all checks, bills of exchange, acceptances, bills of lading, promissory notes, or
10 other obligations of said firm, and that in the event of any other partner or partners injuring or violating this agreement by sending any orders to Europe or elsewhere or by signing any other documents whatsoever, then and in such an event the interest of the defaulting partner or partners shall at once cease and determine."

"2." Second. That as to the matters and things contained in the second article of said bill he says that the first part of the same is true; but it is not true that Vincenzo Scalzo was authorized by his copartners to remain a longer period of time in Europe to make additional contracts, and if he did make any such they were unauthorized by the firm and not binding upon it or upon this defend-

ant; that by mutual consent of all the partners one Hector Turney went with them to Europe as clerk and adviser at the cost of the firm, which paid his expenses and salary.

"3." Third. That as to the matters and things contained in the third article of said bill he says that the same are not true except that said Vincenzo Scalzo made a contract with his brother at Milazzio, in Sicily, to ship fruit to the firm of Joseph Oteri & Co., the said firm to have one-third interest therein and the brother, Vincenzo Scalzo, two-thirds interest therein; that said Vincenzo Scalzo had no right or authority to make any such contract and was never authorized to do so by this defendant or said firm, and this defendant refused to recognise said contract or to be *be* bound by it, as by law and the articles of partnership he had the right to do.

"4." Fourth. That as to the matters and things set forth in
11 the fourth article of said bill he says that the same are not true.

"5." Fifth. That as to the matters and things set forth in the fifth article of said bill he says that the same are not true; that the truth is that the monthly trial balances were regularly and promptly made.

"6." Sixth. That as to the matters and things set forth in the sixth article of said bill he says that the same are not true.

"7." Seventh. That as to the matters and things set forth in the seventh article of said bill he says that the same are not true.

"8." Eight-. That as to the matters and things set forth in the eight- article of said bill he says that the same are not true.

"9." Ninth. That as to the matters and things set forth in the ninth article of said bill he says that the same are not true; that from the organization of the firm until November, 1884, the said Hector Turney was the clerk of said firm and kept the books and accounts thereof, and that from November, 1884, one Joseph Bein was the clerk of said firm and kept the books and accounts thereof, to the knowledge of complainants; the regular commercial books and accounts were kept by the transaction of the firm and trial balances taken every month, all of which were always open to the examination and inspection of the complainants, and their access to the same was never refused by this defendant; that the last trial balance of the books of said firm was taken to 1st June, 1885, which is hereto annexed as part of this answer and marked Exhibit "A;" that a statement of the assets and liabilities of said firm at
12 said date is also hereto annexed as part of this answer and marked Exhibit "B;" that a statement of the profit & loss account of said firm at said date is also hereto annexed as part of this answer and marked Exhibit "C;" that a statement showing what is due to each partner of said firm is also hereto annexed as part of this answer and marked Exhibit "D;" that since 1st June, 1885, and for a long time prior thereto there has been no business transacted by defendant for said firm *an* account of the doings of said complainants in suing for a dissolution of said firm, they having been in litigation with this defendant since 4th Feb., 1885, and said Exhibits A, B, C, and D correctly show the state of the affairs of said firm at this date.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready and willing to aver, maintain, and prove as this hon. court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JOSEPH P. HORNOR,
F. W. BAKER, *Sol's.*

13 Joseph Oteri, being duly sworn, deposes and says that he is the defendant named in the foregoing answer; that he has read the same and knows the contents thereof; that all the allegations in the foregoing answer are true as stated of his own knowledge, and those stated on information he believes to be true.

(Signed) JOSEPH OTERI.

Sworn to and subscribed before me this 18th day of January, 1886.

(Signed) JAMES FAHEY, *Not. Pub.*

EXHIBIT "A."

Trial Balance, J. Oteri & Co.

	JUNE 1, 1885.	
1. Merchandise	184 80	
2. J. Oteri	3,609 54	
3. V. Scalzo	3,829 60	
4. Randazzo & Di Christini	3,766 25	
5. Expense	3,542 93	
Am't over		
14 6. Interest	132 73	
S. H. Terni	115 37	
,'9 R. Filiberto & Co.	92 87	
10. S. S. Jasson		94 23
11. Bills rec'v., J. Zuccas note	2,320 75	
12. Profit & loss		162 11
13. S. Goli	2,193 30	
14. G. Di Christini	307 10	
15. S. S. Coronilla		125 40
16. S. S. Canielia		189 46
17. M. Costarelli & Son	315 56	
18. S. S. Edgar		40 37
21. S. S. Irthnigton		445 08
26. S. S. Bessie Morris		84 21

27. Avendano Bros			140 00
28. S. S. South Tyre			6 82
Cash on hand as per cash book		3,657 26	
		12,677 87	12,677 87

N. O., June 12, 1885.
(Signed) J. OTERI & CO.

Filed Jan'y 20, 1886.

EXHIBIT "B."

Statement of Assets and Liabilities, J. Oteri & Co.

Assets.

15 Cash on hand		3,657 26	
H. Terni owes		115 37	
S. Goli "		2,193 30	
G. Di Christini		399 97	
Bills rec., J. Zuccas note		2,320 75	

Liabilities.

Avendano Bros., due them			140 00
J. Oteri, am't to credit	3,609 54		
Less share of loss	886 24		
			2,723 30
V. Scalzo, am't to credit	3,829 60		
Less share of loss	886 25		
			2,943 35
Randazzo & Di Christini	3,766 25		
Less share of loss	886 25		
			2,880 00
		8,686 65	8,686 65
Am't cash on hand	3,657 26		
Less am't due Avendano Bros.	140 00		
		3,517 26	
Am't of assets uncollected		5,029 39	

Filed Jan'y 20, 1886.

EXHIBITS "C."

Profit & Loss, J. Oteri & Co.

16	Losses.	Gaines.
Mdse.		184 80
S. S. Jasson		94 23
Profit & loss ac.		162 11
S. S. Caniellia		125 40
S. S. Edgar		40 37
S. S. Irthnigton		445 08
S. S. Caronilla		189 46

S. S. Bessie Morris		84 21
S. S. South Tyrne		6 82
Expenses	3,542 98	
Interest	123 73	
M. Costarelli & Son	315 56	
Am't of loss		2,658 74
	3,991 22	3,991 22
To J. Oteri, share ⅓ loss	$2,658 74	886 24
" V. Scalzo, " ⅓ "	2,658 74	886 24
" Randazzo & Di Christini	2,658 74	886 24
		2,658 74

Filed Jany 20, 1886.

17 EXHIBIT "D."

Statement Showing What is Due Each Partner—J. Oteri & Co.

J. Oteri:

Am't invested		5,000
By cash rec'd		74 61
To cash drawn	1,465 07	
To ⅓ share of loss	886 24	
To ⅓ share assets uncollected	1,676 46	
By cash due him	1,046 84	
	5,074 61	5,074 61

V. Salzo:

Am't invested		5,000
By cash rec'd		1,026 93
To cash drawn	2,197 33	
To ⅓ share loss	886 25	
To ⅓ share assets uncollected	1,676 47	
By cash due him	1,266 88	
	6,026 93	6,026 93

18 Randazzo & Di Christini:

Am't invested		5,000
By cash rec'd		15
To cash drawn	1,248 75	
To ⅓ share of loss	886 25	
To ⅓ share assets uncollected	1,676 46	
By cash due him	1,203 54	
	5,015	5,015

Filed March 4, 1888.

EXHIBIT ACT OF PARTNERSHIP. Filed Jan'y 20, 1886.

STATE OF LOUISIANA, }
City of New Orleans. }

Be it known that on this twenty-fourth day of June, eighteen hundred and eighty-four, before me, James Fahey, a notary public in and for the city of New Orleans and the parish of Orleans, State of Louisiana aforesaid, duly commissioned and qualified,
19 personally appeared Joseph Oteri, of this city, Vincenzo Scalzo, of St. Louis, Missouri, each herein acting and stipulating in his own name and behalf—

And Ignacio Randazzo and Antonio Di Cristini, both of this city, sole members composing the commercial firm of Randazzo & Di Cristini, established and doing business in this city, herein representing said firm and as such herein acting in its name and behalf—

Which appearers, acting as aforesaid, declared that they hereby agree to enter into a copartnership for the purpose of carrying on a general commission business and the importation of fruit from Europe and for all matters and things thereto appertaining under the following stipulations and conditions, to wit:

First. The partnership is to be carried on under the firm name of Joseph Oteri & Co., is to be domiciled in the city of New Orleans, and is to exist and continue for the space of two years, to be computed as commencing on and from the first day of July, eighteen hundred and eighty-four, unless sooner dissolved by mutual consent.

Second. The capital invested in this copartnership consists of a sum of fifteen thousand dollars ($15,000.00) in United States currency and has been contributed by the parties hereto in manner following, to wit:

20 Five thousand dollars each of said Oteri and Scalzo, and the remaining five thousand dollars by said firm of Randazzo and Di Cristini.

It is hereby agreed that in the event more capital should be needed at any time during the existence of the contract to carry on said business the said Joseph Oteri shall, if he deems proper and not otherwise, furnish same surplus capital thus needed, and shall be entitled to and charge interest thereon at the rate of eight per cent. per annum.

Third. It is hereby furtrermore agreed that said Oteri shall be the manager of said firm and as such have the exclusive control and direction of its affairs, as also of signing all documents of whatsoever nature or kind, without any exception or reservation whatsoever, pertaining to the business of the said firm and be, as he is, alone entitled to sign the name of said firm on all checks, bills of exchange, acceptances, bills of lading, promissory notes, or other obligations of said firm; and that in the event of any other partner or partners infringing or violating this agreement by sending any orders to Europe or elsewhere or by signing any other documents whatsoever, then, and in such an event, the interest of the defaulting partner or partners shall at once cease and determine.

Fourth. That said Oteri shall, as he is hereby empowered to, delegate all or part of his powers herein by power of attorney to one or more persons wherever in his judgment he shall deem the
21 same expedient.

Fifth. Books of accounts shall be kept in which all the dealings and transactions of said firm shall be entered from day to day and fairly written, from which trial balances shall be taken monthly and a final balance at the end of each year, which books shall be kept at all times open to the inspection of all parties in interest.

Sixth. All profits, gaines, and increases arising or accruing from said business and all los-es, charges, and expenses whatsoever incidental thereto shall be shared and devided and borne out and paid by the parties hereto in the proportions of one-third to each of said Oteri and Scalzo and the remaining one-third to said firm of Randazzo and Di Christina.

It is furthermore hereby agreed that neither the capital invested in said partnership nor the profits arising therefrom shall be withdrawn by said copartners during the continuance of this contract, save and except that each of said partners shall have the right of withdrawing at the end of each business year one-half of his share in the profits of the concern.

It is furthermore agreed that in addition to the interest of said Antonio Di Christina as a member of said firm of Randazzo and Di Christina herein he shall be entitled to and receive out of the net profits of the business of said firm of Joseph Oteri & Co. at the end of each of its business years two per cent. as an extra com-
22 pensation for services to be rendered by him to the business of said firm.

Seventh. In the event of the death of either of said Oteri and Scalzo or both said Randazzo & Di Christina the partnership shall by the fact at once be dissolved and the remaining partner or partners allowed four months from the time of such dissolution to liquidate the affairs of the concern.

Done and passed in my office, in New Orleans, the day, month, and year aforewritten, in presence of Michel V. Dejan & Michel V. Abat, competent witnesses, who sign these presents with said parties and me, notary, after reading hereof.

The original act is signed:

JOSEPH OTERI.
V. SCALZO.
I. RANDAZZO.
ANTONIO DI CHRISTINA.

MICHEL V. DEJAN.
M. V. ABAT.
(Signed) JAS. FAHEY, *Not. Pub.*

A true copy.
New Orleans, 24 June, 1884.

(Two lines erased, two words interlined, approved.)
[SEAL.] (Signed) JAS. FAHEY, *Not. Pub.*

23 *Replication.*

United States Circuit Court, Eastern District of Louisiana. In Equity.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Complainants join issue on the matters alleged in the answer of Joseph Oteri, so far as the same may be taken to deny or avoid the allegations of complainants' bill.

(Signed) W. S. BENEDICT,
Sol. for Compl's.

Filed Feb'y 1st, 1886.

24 *Motion to Appoint Examiner.*

U. S. Circuit Court.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

On motion of W. S. Benedict, solicitor for complainants, and on suggestion this cause is at issue—

It is ordered that W. R. Whithaker, Esq., be appointed examiner herein, before whom testimony shall be taken, and make due report thereof to the court.

(Signed) EDWARD C. BILLINGS, *Judge.*

Filed Feb'y 9, 1886.

Motion to Produce Books and Papers.

U. S. Circuit Court.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

25 On motion of W. S. Benedict, of counsel for complainants' and on suggesting it is material and necessary in the taking of the testimony before the examiner that defendant produce the books and papers from which the accounts filed herein were taken and the receipts and vouchers of the business—

It is ordered by the court that said Joseph Oteri do produce all the books and papers before the examiner, William R. Whitaker, on Saturday, 27th February, 1886, at three o'clock p. m.

Marshal's Return.

On the 26th day of February, 1886, I served a true copy of the

within motion to produce on Joseph Oteri in — by handing the same to him in person.

(Signed) R. B. PLEASANTS, *U. S. Mar.*
J. BAKER, *Dep. U. S. Mar.*

Filed Feb. 26, 1886.

26 Extract from Minute Book.

Hearing of Cause and Reference to J. W. Gurley as Master.

NEW ORLEANS, FRIDAY, *March* 4, 1887.

Court met pursuant to adjournment.

Present: The Hon. Edward C. Billings, district judge.

VINCENZO SCALZO *et als.* vs. JOSEPH OTERI. } No. 11059.

This cause came on to be heard at this term on the bill of complaint, the answer and the replication thereto, and other proceedings in this cause.

Present: W. S. Benedict, for complainants; Hornor & Lee, on behalf of the defendant.

Whereupon the complainants offered the following evidence in support of their bill, to wit:

1. The bill of complaint.
2. Act of copartnership.
3. Letters of defendant to Sicily. See letter book referred to in testimony.
4. Testimony of V. Scalzo.
5. " of I. Randazzo.
6. " of V. Scalzo taken in No. 11003, with documents attached thereto.
7. Exhibit " C," dates and sales of cargoes of fruits.

27 8. Exhibit " C," dates and shipments of cargoes of fruits.

9. Testimony, under commission, of—
G. Di Cristina.
F. Filiberto.
S. Gioe.
G. C. Hirzel.
Letterio Tarro.
Chas. Sarano, of F. Baller & Co.
Francisco Costarelli.
Pasquale Scalzo.
A. F. Sottile, president Bank of Barcelona.

10. Letter credit " D & D 2 " to G. Di. Cristina.
11. Checks " N," " O," " P," July 10th, 1884.
12. Letter 8 October, 1884, to Laganay Pojero, " L."
13. Testimony of H. Terni, F. Allesi, B. Onorato, R. Huber, F. Morano, Ig. Randazzo and exhibits, taken Feb'y 24 and 27, March 3rd, 1886.

By agreement of counsel, with leave of the court, the defendant was permitted to file his note of evidence hereafter.

And the cause was thereupon argued by counsel for the respective parties and referred, by consent, to J. W. Gurley, Esquire, as master, to pass upon the accounts herein and to report thereon at as early date as possible.

28 *Plaintiff's Note of Evidence.*

U. S. Circuit Court.

V. SCALZO *et als.*
vs.
JOSEPH OTERO. } No. 11059.

1. The bill of complaint.
2. Act of copartnership.
3. Letters of defendant to Sicily. See letter book referred to in testimony.
4. Testimony of V. Scalzo.
5. " of I. Randazzo.
6. " of V. Scalzo taken in No. 11003, with documents attached thereto.
7. Exhibit "C," dates & sales of cargoes of fruits.
8. " "C," " & shipments of cargoes of fruits.
9. Testimony, under commission, of—
   G. Di Cristina.
   F. Filiberto.
   S. Gioe.
   G. C. Hirzel.
   Letterio Farro.
   Chas. Serano, of F. Baller & Co.
   Francisco Costarelli.
   Pasquale Scalzo.
   A. F. Sottile, president bank of Barcelona.

29 *Plaintiffs' Note of Evidence Continued.*

10. Letter credit "D. & D." to G. Di Cristina.
11. Checks "N," "O," "P," July 10th, 1884.
12. Letter 8 October, 1884, to Laganan Pojero, "L."
13. Testimony of H. Terni, F. Allesi, B. Onorato, R. Huber, F. Morano, Ig. Randazzo, and exhibits taken Feb'y 24 & 27, March 3rd, 1886.

Filed 4th March.

1. Bill of complaint. Copied at page 18 of this transcript.
2. Act of copartnership. Copied at page 1 of this transcript.

30 *Letters of Defendant to Sicily.*

Translation of letters from press-book of Jos. Oteri & Co.

2. 7TH DECEMBER, 1884.

Gaetano Di Cristina, Palermo:

We are in possession of your favor 15th ult., as also your cable 30th ult.

We have been unable to send you any money either in cash or letters of credit on London simply because our partner, Mr. Randozzo, is still dilatory and defective in the payment of his share of capital. The latter would, as capital, desire to surrender us a credit of $3,700, which he claims to have against you. This we cannot under any condition accept, and you will surely find it reasonable. It is necessary, therefore, to await the arrival of Mr. Scalzo and Mr. Di Cristina to place everything clear. Our Mr. Oteri, in entirely private way, says that whatever may eventually happen he intends, if agreeable to you, to continue his commercial relations with you; and even if the present firm was to dissolve you should not attribute any fault to Mr. Oteri for the delay in remittances and credits, &c., and the blame should entirely rest upon the said Randazzo. We hope to hear on this first vessel a good number of boxes shipped by you. Rest assured such shipment would much encourage said Randazzo.

Without further for to-day, we have the pleasure to remain yours truly, —— ——.

31 (4.) Letter of credit lbs. 500.

Messer. R. Filliberto & Co., Palermo:

With the present we beg you to notice that we have opened a credit for 500 pounds sterling on Messer. Lazard, Freres & Co., of London, for merchandise to be shipped to my house. Your drafts at 90 days' date must not — and half of the consignment of consular invoice and must be accompanied as customary by b. l. to order endorsed in blank consular invoice and certificate of insurance. Without further—

Yours sincerely, —— ——.

(5.) Letter of credit lbs. 500.
Mr. Andrea Pirandello, Messina.
(Same as last.)

(6.) Messers. Fernando Baller & Co., Messina.
(Same as last.)

32 (7 & 8.) Messrs. R. Filiberto & Co., Palermo.
Letters of credit lbs. 500 each.
(Same as last.)

(9.) Messrs. Mariana Costarelli & Figlie, Messina.
Letter of credit lbs. 500.
(Same as last.)

(10.) Mr. G. C. Hirzel, Jr., Palermo.
Letter of credit lbs. 500.
(Same as last.)
(11.) Mr. Letterio Tarro, Messina.
Letter of credit lbs. 500.
(Same as last.)
(12.) John S. Townsend & Co., London.
Letter of credit lbs. 500.
In English.
33 (13.) Salvatore Gioe, Palermo.
Letter of credit lbs. 500.
(Same as last.)

(15.) OCTOBER 7TH, 1884.

F. Bellar & Co., Messina :

I have the pleasure to enclose herewith a letter of credit for lbs. 500 *pounds*, to be used for shipments at the present for lemons in joint account, against which you will draw at pleasure. During my travel in Sicily, having learned that one of my partners did not have a very good reputation, I withdrew, and therefore the business will be continued in my name. I am sure, dear sirs, that you will honor me with a trial shipment, and I assure you that it will be to your interest, as facts will prove it, as soon as this letter of credit will be consumed, and, if necessary, in the future I will open letters of credit for larger sums. Sure that you will honor me with an answer.

I remain, yours truly,
(Signed) JOS. OTERI.

(16.) The next letter in book badly copied and unable to be read.

(17.)

34 G. C. Herzel, Jr., Palermo :

Without any of your favors to answer, I have the pleasure to enclose herewith a letter of credit £500 *pounds* on London, Lazare, Freres & Co. I cannot officially notify you of the dissolution from my partners, but all the same I start anew and continue the business in my own name, and as you see the enclosed letter of credit is in my name only.

Lemons are in good demand at present, and if you have shipped on the S. S. Jason I think you will do well. I am in hopes that you will give me your aid, and on my side I leave nothing undone to give you satisfaction. Do not forget during the present year we will have the exposition ; therefore fine fruit will be well paid.

Awaiting your favors, I remain,
(Signed) JOS. OTERI.

(18 & 19.) OCTOBER 7TH, 1884.

Messrs. R. Filiberto & Co., Palermo :

We have the pleasure of acknowledging your favor 19th ult.

and your cable in regard to salt. After my best endeavors I was obliged to answer it is impossible, and this with great displeasure to me.

I cannot officially notify you, having withdrawn from Messrs. Randazzo and Di Cristina, until the arrival of Mr. Scalzo.
35 In the meantime business transactions must be made in my name only, as it is almost certain it will so continue. I enclose you two letters of credit, each for £500 *pounds;* one is for the entire amount and the other conditionally for only half of the amount consular invoice. This for the present; and for the future as the dispositions will change the conditions will also change.

I would be pleased to hear from you in regard to young Tagliavia—the one who offered himself as agent. (Two lines unreadable.) I beg of you to show yourself superior to all others in your shipments and to use most actively and in future you will see what I can do. I thank you for all the information given me and I am sure the new mark of lemons will be the best fruit seen in N. O. Special recommendations to you are useless, as on both sides time and experience will demonstrate all. I expect a good cargo on the Jason, although the credits will not reach destination in time for the vessel. Please take notice that my agent is Mr. Letterio Tarro. I think I could not have chosen better man and particular- in regards to honesty.

Awaiting your further favors, I remain,

(Signed) JOS. OTERI.

(20.)

Leugi P. Randella, Messina:

36 I have the pleasure enclosing letter 500 pounds credit in favor your brother to be used for advances on shipments. The present letter of credit is of small importance; next one will be larger amount. I am in hopes you will give us a trial of part of your consignments. I do not doubt with facts you will ascertain that oppositions are advantageous. During my short stay in Sicily I ascertained that one of my partners does not enjoy a good reputation, and, not wishing to have my name come in contact with people — of immaculate respectability, I decided to withdraw; therefore the business will be conducted in my own name. Awaiting to receive your writings,

Yours truly,

(Signed) JOS. OTERI.

(21 & 22.) OCTOBER 8TH, 1884.

Messrs. Lagana & Pojero, Palermo:

I am favored with esteem, 2nd September. I beg to be excused if I begin the present by talking of myself instead of answering your inquiries. Intending to enter in business in Sicily, I took a trip to see my native place and with my own eyes to see with whom I had to act. If to-day I possess a discreet capital I did not earn it in a short while or dishonestly, but instead long periods of years and

slowly I accumulate it. As soon as I arrived in Sicily, just
37 as if struck by lightning with clear skies, I learnt among my partners they were some bad characters of honorable reputation. Such a blow I could hardly bear. I give you my word I was ashamed to present myself to respectable persons; otherwise I should make it my duty to pay a visit as soon as I returned, and in a lawful way I have withdrawn, and it is for this reason that today that I transact business in my own name only. In regards to your inquiry I will endeavor with extreme caution and secrecy to obtain the information required, but I must assure that such a fellow as "C." is an individual capable of any action; none of his doings should surprise you; for the value of a cent would swear to a falsehood in the name of God and the *tone* of his father, or such other oath that would make one shiver and convince him that he is telling the truth. On some occasion, in order to catch him well in a trap, contemparaneously while you are making a shipment to him of fruit ship some boxes to me with different brand, but the same kind of fruit, & then you will have proofs on hand to find out his rascality and intrigues. With diplomacy I will endeavor to obtain some auctioneer's books and find, if possible, some clues, and in a short while will advise you. I will be pleased to learn if at some future time and for information, well understood paying for same, I could depend upon your house; this would very much please me. I hope that the future—— (Letter ends here.)

38 (23 & 24.)

Mariano Costarelli & Figili, Messina:

I hasten to enclose letter of credit for 500 pounds sterling, so that you may use it on first occasion. Said letter will always be renewed or redoubled, if necessary, during the entire season. Having learnt during my sojourn in Sicily that some of my partners were not of immaculate respectability, I have forced them by law to withdraw; therefore the business will continue in my name solely and exclusively. I trust that you will not fail to try my activity on the first occasion, and I will give you my word it will be to your essential interest. You will not meet with the bareface intrigues that are committed. This is no humbug, but facts which can be evinced. The small order for figs remains confirmed. I hope during the season we will have occasion to transact more important business, either in figs or (illegible), exclusive account or joint account; sulphur for my exclusive account. Lemons are in good demand, and I think during the present month will realize good prices.

Sir, the general prospects are good in view of the opening of the exposition, which will take place on the 15th December, to last 6 months. Our orange crop is abundant, but not as good as last year, as it is already 5 months since we have had any rain.

Yours respectfully,

(Signed) JOS. OTERI.

39 (25 & 26.) OCTOBER 7, 1884.

Mr. Letterio Tarro, Messina:

I enclose herewith letter of credit for lbs. 500 additionally for one-half, and this I done in order to economize banking commission, and beg you if this don't please you to tell me which mode you prefer; this I done with everybody else. I trust you will know how to guard our mutual interests. As your influence is enough, whenever there is a steamer of Tagliavia consigned to me please give them the preference, but under no circumstances neglect the shipments. I am positive to be by you well represented and you will see in future with facts what I can do. I have just received your favor 18th ult., and noted its contents. I approve all your ideas, and with such person as you many instructions are useless; therefore act as you think best. I confirm my cable as follows: Curlew, boorish, rapturous, which, according to Scattergood code, reads: Lemons are in good request. Sent letter of credit in your favor by mail, lbs. 500; for the present and until our Mr. Scalzo returns, business will be transacted in my name, because, as you will know in a short while officially, Messrs. Randazzo & Di Cristina will have no further transaction with me. I hope to receive shortly some good news from you, and I repeat that hereafter you will see what I can do.

Awaiting your future favors,

Yours truly,

(Signed) JOS. OTERI.

40 (31.) OCTOBER 10, 1884.

Mr. Fardella Francesco, Fu Carlo, Palermo:

I have the pleasure to enclose a small letter of credit for lbs. 200 sterling, on limited conditions, as you did well explain to me that in case the fruit arrived rotten you would be responsible for advance made or eventual loss. If you have the means of assuring me through some good shipper I would naturally be more liberal; therefore please let me hear from you on this subject. I trust I will receive on first opportunity a large shipment which would encourage me greatly. Awaiting your favors,

(Signed) JOS. OTERI.

(32.) OCTOBER 10TH, 1884.

A. Trifilletti & Figili, Milazzo:

We have received a letter from you. Our partner, Mr. Scalzo, who informing us having appointed you our agent, I hasten to enclose a small letter of credit for lbs. 300 sterling. I was obliged to make it for small amount and limited, as our said Mr. Scalzo did not give us any particulars, but on his arrival will give us more accurate information. We hope, at first opportunity, you will make us a nice shipment, which will encourage us greatly. Awaiting your favors,

(Signed) JOS. OTERI.

41 (33.) October 10th, 1884.
A. Trifelletti & Figili, Millazzo.
A letter of credit for lbs. 300 sterling.
Same as on page —.
(34.) October 10, 1884.
Francesca Fardella, Fu Carlo.
Letter for lbs. 200 sterling.
Same as on page —.
(35.) October 10th, 1884.
G. Di Cristina, Palermo.
Letter of credit for lbs. 1,000.
Same as on page 4.
(36.) Cable: OCTOBER 10TH, 1884.

Agrumeto, Palermo:

Depravity, boorish, ratafia.

42 (37 & 38.) OCTOBER 10, 1884.

G. Di Cristina, Palermo:

I confirm my previous letter, 7th inst., and acknowledge receipt of your cable, with which you ask lbs. 400 more, vessel being in port loading, and also confirm my cable, answering "Depravity, boorish, ratafia," namely, will write you particulars; have sent you letter of credit lbs. 1,000.

Mr. Randazzo does not desire to put up his money, and absolutely disapproves the giving of cash advances to you because he claims a credit of 3,700 dollars against you, equal to lbs. 750 and the lbs. 250 I gave you in Palermo forms a total of lbs. 1,000 cash. Therefore neither he nor I can understand why you need so much cash, especially at the present moment. We don't think there are many boxes to ship. Otherwise, if the firm continues, J. Oteri & Co., why can't you trust your own son and brother-in-law?

There is another reason it does not pay to give cash advances, because, calculating the interest on the money, the commission to the agent, and other expenses, would be simply working for glory, which would not pay for the risk or to entrust without any security large amounts, while in Sicily you, among others, don't seem disposed to make any shipments without advances. Messrs. Randazzo & Di Cristina not having contributed towards their share of capital, the business, for the present at least, must be conducted in
43 my own name, and on arrival of Scalzo and Di Cristina you will receive more certain particulars.

I will repeat that even continuing the business alone I desire to continue operation with you, and please be persuaded that I am not at fault for all this trouble. You will find proper that I don't want partners without money of this kind; there are many. In the hope of doing large business with you this season, &c.,

(Signed) JOS. OTERI.

(39.)

Mr. Emico Chiassone, Catania:

Although late, I answer your favor 30th ult. August. To tell you frankly I have, as generally *as* every one else has, a bad opinion of Catania market. Therefore, before entering into any transaction, I would like to have a trial shipment from you, so that I may know what kind fruit you handle and with whom you are connected. You may enquire from whomever you please and obtain accurate information regarding me. Awaiting your answer, I am,

Yours truly,

(Signed) JOS. OTERI.

(40 & 41.) OCTOBER 11, 1884.

Sig. Francesco Tracuzzi, Messina:

44 I have just returned from Sicily, and in order to evitate (?) delays I was obliged to hasten my departure. Therefore I did not have the pleasure of seeing you. Your favor 11th ult. is duly received. I am sorry that for the present I am unable to appoint you as agent, having one already in the person of Letterio Tarro, but this does not interfere with any private transaction that may exist hereafter between us. It would be much pleasure to me to receive a lot of fruit from you on first opportunity of your favorite brands. This as on experiment. Then you can tell me on what condition you intend to work with me; on letters of credit or anything else.

Please hereafter address your letters or consignments to myself, as, for motives that for the present are useless to detail, I have decided to work in my own name and without partners. Either for my solvency and activity you can obtain more accurate information of whomever you may cho-se.

Awaiting your favors,

Yours truly,

(Signed) JOS. OTERI.

(42 & 43.) OCTOBER 15TH, 1884.

R. Filiberto & Co., Palermo:

Your favor 22nd ult. is duly received. I have used my best endeavors to obtain a larger order for sulphur, but have failed, and hope in future I may succeed.

45 On my part I will use every possible means to favor the (S. S. Tagliavia), but without compromising myself. You must also interest yourself.

In regards to Joe Tagliavia, I am satisfied that you will accept for me. I must reassure you that I don't deviate from what I told you personally; I want a guarantee for my advances; that I don't desire to go fast, for he that goes slow goes far. I must thank you for the information given me in regards to the new mark of fruit. (Three lines badly copied.) in perfect health.

If some shipper offers you any fruit please inspect same, and if it is not fine mdse. refuse it; let them ship it to some one else.

Awaiting your favors,

Yours truly,

(Signed) JOS. OTERI.

(44.) OCTOBER 15TH, 1884.

G. Musimeca, Tappalardo, Catura:

I am favored with yours of the 31st July, which was found waiting on my return from Sicily. The sad results obtained in transaction with your market heretofore puts us to thinking.

We desire, therefore, to sell what marks of fruit you are able to ship and the result may bring us in accord; for the present
46 we do not allow advances to any one.

Awaiting your further favors,

(Signed) JOS. OTERI.

(45.) OCTOBER 17, 1884.

Mr. Letterio Tarro, Messina:

I confirm my previous letter, and I am without any of yours answered. It is necessary to write at present to notify you that on arrival of Mr. Cussimano on your market, where he is the most importance, considering his vile character, he will leave nothing undone that is low and contempt-ous to undo or break up certain transactions. I must assure you that, knowing perfectly his trickery system that individual of no character will use. Although no serious or honest person can ever believe him, you may inform your friends that they are at liberty to obtain more full and accurate information in every respect concerning me individually whereever they cho-se. Time, then, will testify who is the most honest.

If any of your freinds desire to have the net proceeds remitted by telegraph as soon as the sale is affected I am prepared to do it, charging them only the telegram and whatever difference in exchange. This, I think, will facilitate matters instead of awaiting 20 or 25 days for exchange by mail. I recommend you to use your best endeavors on my part; I know you will be perfectly satisfied.

Awaiting your further favors,

(Signed) JOS. OTERI.

47 (48.) OCTOBER 17TH, 1884.

Salv. Gioe, Palermo:

I confirm my last respects 7th inst., and I am without any of yours unanswered.

Do not believe that my insistance is for the only scope of making a commission out of you; my idea is that you should try and see how business is conducted. I am positive that neither the oaths nor the many falsehoods of that individual have parsuaded you. He blows that you owe him immense amounts, and many other infamies, but I am sure he owes you much more than you owe him; open your eyes and ascertain at once if it is the truth. You will

no longer remained with your eyes closed and that fellow will no longer fill your head.

Lemons at present are bringing high prices, which I think will continue for some time. Our oranges are small and ugly, caused by want of rain. I anxiously await your favors to answer, and as I before stated that this is a transaction more of honor than interest, without further favors.

Yours truly,
(Signed) JOS. OTERI.

(50 & 51.) OCTOBER 17TH, 1884.

Sig. Puerce, Becker & Ilardi, Messina:

48 I have the pleasure to answer your favor 30th August ult., handed to me in person.

I accept with pleasure your offer to consigning to me the steamers of the International line and all vessels that you or Mr. Talivia may hereafter eventually charter, every care of economy of expenses will be taken by me to give you satisfaction, and also will use best endeavors to load them; rest assured that in Messina and in Palermo we have made good connections given us absolutely preference. Mr. Letterio Tarro and R. Filiberto and Co. of Palermo will without doubt inform you to the same effect. I hope that the business will take good shape and will result in a brilliant success.

Yours respectfully,
(Signed) JOS. OTERI.

(52.) N. O., *Oct.* 18*th*, 1884.

Tagliavia & Co., Palermo:

On receipt of your cable 3rd inst. I left nothing undone to obtain orders for sulphur, but at present to no effect.

I have telegraphed all shippers encouraging them for the S. S. Jason but as you know all letters of credit, that have been sent from here on the 7th inst. cannot reach Palermo in time. I assure that no time was lost in opening credit, and that all my correspondence have been well favored.

I am in hopes to receive hourly a cable announcing the departure of Jason with a good number boxes aboard, and I trust at
49 this season will be a favorable one to both; awaiting your further favors,

Yours truly,
(Signed) JOS. OTERI.

(56.) N. O., *October* 18*th*, 1884.

R. Filiberto & Co., Palermo:

I confirm my last 15th inst., and I am without any of yours unanswered. This season I think you are in a position to do very well, as many circumstances are in favor.

The first is, our banks do not open credits without some satisfactory guarantee and you well know our importers have not much

money. Then the firm of Culotta & Moceo has been dissolved and I can assure that neither one has a cent; the third circumstance is that the N. O. Fruit Importing Co., the representative Mr. Macheca was lately in Palermo, has some trouble among the partners, will probably discontinue; finally the fruit that was consigned to Randazzo & Di Cristina will be consigned to me even after our dissolution, because these have no money; this I can assure you because for their shortage of money has been the cause of our dissolution, they having failed to put in their share of capital as per contract; when you will have pondered upon these facts you will not blame me if I tell you that with activity and diligence we should have a real brilliant season and am positive that with your aid we shall
50 succeed. As for good prospects you may encourage all your friends, such as Maniscalco & Co. Awaiting your further favors.

Yours truly,
(Signed) JOS. OTERI.

(58 & 59.) N. O., *Oct.* 17, 1884.

Mariano Costarelli Figli, Messina:

Without any of your favors unanswered I confirm my last respects 7th inst. The market on lemons is very firm to-day, the ruling prices are $6.00 upward; I would have been very pleased had you made small shipments by first vessel, as to all probabilities the prices will be good. Whenever dear sirs, you will honor us with a trial shipment, I am positive of giving you satisfaction in every respect, and particularly not to permit noble "C" to do as he pleases and to derive the first and largest profit. Without entering in particulars there is a great deal of rotten in that individual. I surmise during his sojourn in Messina he did not economize any oath and calumnies, and if you sirs to satisfy or better know would give power of att'y to some person here to verify your affairs, namely, duties paid and returned and prices obtained on all your shipments of fruit to Cusimano. I am positive you will be his creditors for one thousand dollars or more; all this is very easy, particu-
51 larly for a custom-house transaction; do it and you will be persuaded. Excuse me for all I said, but believe it is nothing but simply truth. Awaiting your further favors.

Yours truly,
(Signed) JOS. OTERI.

(60 & 61.) Oct. 24th, 1884.

Cap. Fardella, Palermo.

Dear Friend: I confirm my commercial letter and now write you in private. I am as yet always unwell suffering with my eye. I assure as soon as I am a little better I will hav emy photograph taken and send it to you according to promise. I am in hopes to be able soon to dissolve from my noble partners, and I assure you this action keeps me busy, write me often and I hope if God is willing will see you next year; keep in good health and if it is warm don't go too often to church. If you know of any one having

a fine garden of lemons tell them to ship them to me (Two lines badly copied.) otherwise for gardens of Monache. When you are ready to ship some fruit you should give it a new mark. Every box bearing the figure of a priest or a monk, or any other beast of that race, I am sure that after being excommunicated will bring good prices.

Should you go to Baccacio kiss it for me, hoping to shake
52 hands with you shortly.

Your friend,

(Signed) JOS. OTERI.

(62.) Cable: Filiberto, Palermo, Levelling, Rilious.

(66, 67.) NEW ORLEANS, *Oct. 25th*, 1884.

R. Filiberto & Co., Palermo.

I am as yet without any of your favors to answer but what surprises me most is that I have not received any telegram announcing departure of steamer, while Cusimano has received the news four days ago that steamer had left with 1300 boxes. Everybody comes to me to hear exact news, and I find myself in a pretty position not able to answer, therefore I was obliged to cable you "leveling, billious," in order to learn something.

Even if there was no fruit aboard for me I had sulphur and
53 almonds, therefore I think it was your duty to let me know.

I hope for the future you will be more precise, as these small things disgust me. Credits more than sufficient were sent by me, therefore with the vessel leaving next month expect a large cargo. I would be very much disappointed if you did not ship me any fruit on the first vessel as I expect good prices, and I cannot understand why such a small cargo. If it was a question of credit you should have telegraphed me, but I won't attribute all to a scarcity of fruit in Sicily. The cargo of the Archimede for N. Y. will be sold to-day and I am expecting to hear of very good prices; but if that cargo had been sent here it would have brought 25% more. Our demand is good, and market absolutely bare. All heavy charges incurred in having lemons brought from N. Y. to here will go in favor of the shippers. Without further favors,

Yours truly,

(Signed) JOS. OTERI.

(No. 69.) John S. Townsend & Co., London.
Letter in English.

(No. 70.) Phelps Bros. & Co., Liverpool.
Letter in English.

54 (141.) NEW ORLEANS, *Nov.* 29, '84.

Sig. Vincenzo Cricchio, Palermo.

DEAR COUSIN: Having been sick, could not sooner write you. On arrival I found all my family in good health, as I hope you are all are. I would be very grateful if you would give me some information on various prospects in Sicily, and how P. Agilla & Co. have

damaged matters. Should I be any way useful to you I am always at your disposal. Without further of to-day,

Yours respectfully,
(Signed) JOS. OTERI.

(151.) NEW ORLEANS, *Dec.* 19, '84.

Sig. Fardella, Palermo.

DEAR FRIEND: Your affectionate favor 20th ult. duly received. I hope to hear soon of your first shipment and don't forget I want to see some.

I hope that you will ship enough to cover letter of credit and that you will call for another giving your conditions, which
55 will be carried out in a very friendly manner. I am very anxious to see the begin-ing of our transactions and that they will largely increase. Therefore I am awaiting your news with all my heart.

I remain your friend,
(Signed) GUISEPPE OTERI.

(154, 155.) NEW ORLEANS, *Dec.* 10, '84.

Private.

Mr. G. Di Cristina, Palermo:

I answer your letter 21st ult. with all possible eccentricity. Your letters are ever eternal complaints, are in my estimation without any sense. As in place of speaking positive business, contains romances, only good for boys of the elementary school. In few words I will tell you that I will acquire my opinion of your capacity and influence with facts during the season and by the quality and quantity of fruit you will ship, and never by your ample strains of terms badly placed. Whenever I shall ask you for information and you will be kind enough to give them I shall be obliged to you, and without asking them please abstain from writing biographies
56 of any one. In order to withdraw every excuse we will close all credits and relations by you so much despised with Filiberto & Co., consequently we hope to hear no more about it. We will open a free credit in your favor if our Mr. Randazzo will approve same.

In regard to your spirited observation "that all irregularities are flour in my sack," I beg you to believe that I use my own flour and I do not need after my long commercial experience to be regulated by anybody, as no one of my acquaintance requires underhand work, to divide more or less yours or any one's else opinion. I conclude therefore that I desire your letters to be full of business, that they should treat on fruit prospects, for the future, and commercial ideas, finally, truely, substantially, while all the useless tales you should leave to women and children.

Therefore with the present I beg you to end all that is superflu-

ous in your correspondence, if you desire that the business should attain that serious progress wished by me.

Without further,

We remain,

(Signed) JOS. OTERI.

57 U. S. Circuit Court.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Testimony taken by consent on Friday, May 14th, 1886, at 3 p. m., at the office of Mr. W. S. Benedict, No. 29 Camp street, on behalf of plaintiffs.

Present: W. S. Benedict for plaintiffs; Joseph P. Hornor for defendant.

Testimony of Mr. V. Scalzo, Page —.

58 Mr. VINCENZO SCALZO, sworn on behalf of plaintiffs, says:

By Mr. BENEDICT:

Q. Mr. Scalzo, you gave your testimony in a case against Mr. Joseph Oteri some time ago in court, which I have given you to read. Have you read it?

A. Yes, sir.

Q. Is it correct?

A. Yes, sir.

Q. The testimony is in English. Has it been translated to you in Italian?

A. Yes, sir.

Q. You are satisfied it is correct?

A. Yes, sir.

Q. Did you know a gentleman named Allessi, who was one of the clerks of Mr. Joe Oteri?

A. Yes, sir.

Q. Did Mr. Allessi tell you anything about the manner in which the affairs were conducted?

A. Yes, sir.

Q. What did he tell you?

A. Mr. Randazzo told me that Mr. Allessi had informed him that he *he* did not like the way in which the correspondence and books were carried on.

By Mr. HORNOR: I object to the testimony on the ground that it is hearsay and out of our presence.

59 By Mr. BENEDICT:

Q. What else did he tell you?

A. Mr. Randazzo told me—after he told me that I went to see Mr. Allessi, who told me all about the writing in the books.

Q. After you came back from Sicily did you have any conversation with Mr. Oteri as to whether there was money in the business; and, if so, what did he say about it?

A. When I returned to New Orleans I saw Mr. Oteri, who said he wished to dissolve the copartnership on account of the money not being turned in.

Q. What was done then?

A. He told me that the Sicily business didn't pay; that it was not good, and that if I did not give him the money at once he would dissolve the copartnership, and so I gave him the money, and then Mr. Randazzo also gave him money.

Q. Was it after you had given him the money that you heard through Mr. Allessi about the way the books were kept?

A. Yes, sir; after the money was paid. As soon as I paid in the money I went back to St. Louis, and when I came back from St. Louis I found Mr. Randazzo, who told me what Allessi had informed him, and then I saw Mr. Allessi.

Q. Have you been in Sicily since?

A. Yes, sir. When I came back here from St. Louis I told Mr. Oteri I would like to see the correspondence and books, and
60 he said, Certainly; whenever you wish to see them you can come and see them. After that I went one day with Mr. Randazzo, Mr. Di Christina, Mr. Allessil, Mr. Huber, and we asked Mr. Oteri to produce the accounts and the books, and he had previously refused, but he brought the letter-press book, and it was put in front of Mr. Allessi for him to read, but all at once he (Mr. Oteri) came and put his hands on it and said, "No; if you want, I will count the number of pages in the copy book and give you a receipt for them." I answered him, I don't want a receipt of the number of pages, but I want to look at and examine the letter book and correspondence. Mr. Oteri took the letter book then and locked it up in the safe, and then said, If you wish to examine the letter book and these accounts you have got to go to court; and he left us standing there.

Q. Have you been in Italy or Spain this winter or spring?

A. Yes, sir.

Q. When did you come back?

A. About twenty days ago.

Q. Did you go to any of the places where Mr. Oteri had made arrangements for the firm of Joseph Oteri & Co.?

A. Yes, sir; I was at Palermo, Barcelona, Catania, and Millazzo.

Q. Did you see any of the persons that you had engaged to have shipments of fruit made from Barcelona; and, if so, whom?

61 A. Yes, sir; I saw my brother's firm.

Q. What is the name of your brother's firm?

A. Pasquale Scalzo and G. Accetta.

Q. Did they ship any fruits to the firm of Joe Oteri & Co.?

A. Yes, sir.

Q. Was there any money given to them?

A. Well, when I went to Europe Mr. Oteri left me at Catania, and

I saw this firm of Pasquale Scalzo & G. Accetta, and I made arrangements with them to ship fruit to the firm of Joseph Oteri & Co., and when I returned I told Mr. Oteri about this arrangement, and I asked him if he was satisfied. He said yes. I then said the goods were to be shipped on joint account, and I *I* told him we ought to send a thousand dollars to these people, and Mr. Oteri sent them a thousand dollars, and then afterwards when Mr. Oteri saw the goods—that is, oranges and lemons—he said, I don't want any of these goods on joint account; if they want, they can send them to me on commission. I had already written to these people that the goods were to be shipped on joint account. Then Mr. Oteri wished to dissolve the copartnership, and cancelled the letters of credit which had been open to them. The letter of credit had been opened to the Bank of Barcelona for this firm of Pasquale Scalzo & G. Accetta and for any person who would ship us goods, but it was understood to be Pasquale Scalzo.

Q. What was the effect on that firm of Pasquale Scalzo &
62 G. Accetta of the withdrawal of this letter of credit and the refusal of the shipment of fruit?

A. He cancelled this letter of credit and others, and then we insisted upon the copartnership continuing at the time he wished to dissolve it. When I found out he had cancelled this letter of credit, I had already made arrangements with this firm of Pasquale Scalzo & G. Accetta and had sent them a thousand dollars by cable to send us fruit. This last time I was there I asked them about my thousand dollars that I had sent them, and also about the thousand dollars Mr. J. Oteri had sent them, and they showed me an account which showed a loss of nearly fifteen thousand francs.

By Mr. HORNOR: I object to that testimony on the ground that it is hearsay and out of our presence and therefore not binding on us.

(Witness continues his answer:) I was obliged to pay seven thousand and some odd hundred francs out of my own pocket out of the thousand dollars Mr. J. Oteri had sent them, and out of my thousand dollars, one for the company there and one-half for the company here of J. Oteri & Co. I having spoken to several parties and merchants and shippers of fruit in Messina, they asked me what
kind of a partnership we had in New Orleans. They re-
63 proved me for it. They complained. Some of the parties said: You stated that you (Scalzo) were a partner with Mr. Oteri, and we find out that instead of that you are not a partner at all, and that Mr. Oteri had opened all the letters of credit in his own individual name and then he cancelled them. What was the matter?

By Mr. HORNOR: I object to this testimony as being hearsay and out of our presence.

(Witness continues his answer:) I answered them that I didn't know anything about it, that Mr. Oteri wished to dissolve the partnership, and that is all I know about it. When I was in Palermo I

saw Mr. Gioe and I asked him what arrangements he had made with Mr. Oteri.

By Mr. HORNOR: I object to this testimony on the ground that it is hearsay and out of our presence.

(Witness continues his answer:) I asked Mr. Gioe about the business affairs, and I told him that he owed the house of Joe Oteri & Co. money, and he answered that Mr. Oteri was doing the business in his own individual name and that he (Oteri) had written letters that he had dissolved the partnership with Di Christina and me.

64 By Mr. HORNOR: I object to this testimony on the ground that it is hearsay and out of our presence.

(Witness continues his answer.) And he told me that this letter of credit had been opened in Mr. Oteri's individual name, and every person whom I spoke to in Palermo told me the same thing—that Mr. Oteri had told them that he would dissolve the copartnership because we were not responsible parties.

By Mr. HORNOR: I object to this testimony on the ground that it is hearsay and out of our presence.

Q. Did you not buy any fruit here that had been consigned to the firm of Joseph Oteri & Co. at any time when it was sold for the firm; and, if so, on what conditions?

A. For the last eight or nine years I have been in the habit of buying fruit at auction. I bought fruit from Mr. Cussimano. I bought fruit from Mr. Randazzo when he was receiving fruit by steamers. I have also bought fruit from Mr. Cullotte and others. I bought this fruit at thirty, sixty, and ninety days' credit. I have bought fruit from Mr. Cussimano up as high as seven thousand dollars at thirty, sixty, and ninety days' credit by giving notes. We had made arrangements with Mr. Oteri among ourselves as to whom we should sell fruit to for cash and to whom we should sell fruit to on credit, and we all came to the understanding that Mr.
65 Zucca would not be allowed any credit at all. Mr. Oteri had received seven or eight thousand boxes of fruit—I don't remember exactly now—consigned to the firm of Joseph Oteri & Co., and Mr. Randazzo and I went to Mr. Onorato to obtain catalogues, and Mr. Onorato said: "Gentlemen, if either you or Mr. Randazzo buy any fruits consigned to Mr. Joe Oteri & Co. you will have to pay cash for it before delivery." That was the condition for everybody—all must pay cash. Mr. Onorato announced those terms before he commenced the sale—that it was cash before delivery for everybody. I bought a good deal of fruit—four or five thousand dollars—from Mr. Oteri. I was in Mr. Torre's office when Mr. Onorato's clerk came there with a bill, and upon my making a proposition to him to give a note for thirty days he said, No; I have orders from the auctioneer that this fruit is sold for cash and you must give me cash, and so Mr. Torre drew a check and paid him. Mr. Torre was buying for me.

Q. Was it at that sale Mr. Zuccas bought the fruit that he did not pay for?

A. Yes, sir; it was at the same sale.

Q. Who paid the expenses the first time when you went to Europe with Mr. Oteri?

A. Mr. Oteri paid for the tickets from New York to Messina. At that time there was quarantine at Naples, and I was obliged to undergo quarantine with the other party, Di Christina, for
66 about fifteen days at my own expense. All the time I was there with the other party it was at my expense.

Q. Didn't Mr. Oteri refund that money to you?

A. At Catania Mr. Oteri gave me some money; I don't know how much it was. A year had elapsed since then, and I don't remember now how much it was. It may be fifty or a hundred dollars.

Q. After the quarantine at Naples was over who paid your expenses and how much?

A. Well, I brought Mr. Oteri a statement, but I don't remember how much it was; but I think altogether it must have been about six hundred dollars for myself and Di Chrisitina.

Q. Was that money refunded to you in the office of Mr. Joseph Oteri?

A. I had given Mr. Oteri other funds besides that. I was not able to see the accounts. I don't know how the accounts stood. He never gave me my accounts, and I don't know how I am fixed on those accounts.

Q. Did you say that you had given other money to Mr. Oteri outside of the five thousand dollars on capital?

A. Yes, sir. I don't know whether it was in order to pay travelling expenses or what it was for. He never gave me my accounts.

Q. What were the expenses of Oteri & Co. here in New Orleans, as far as clerk hire and other expenses?

A. Mr. Oteri told me in St. Louis he had hired an office at
67 sixty or seventy dollars a month. I don't remember exactly how much.

Q. Then did he say what clerk he had hired and how much he was paying his clerk?

A. I don't remember whether it was seventy-five dollars or what it was. Before I left I told Mr. Oteri that I didn't want that office at all, because Mr. Zuccas was down stairs, and I said when I would return I would take another office, and he said all right; I will telegraph now and give up the office. When I returned I was informed that he had made a lease of that office for one year.

Q. In one of the accounts filed by Mr. Oteri you (Scalzo) are charged with drawing $2,197.33. Did you draw that amount out of the firm?

A. I never received a cent. I don't know whether he has paid them for me, but I know that I never received any money.

Q. Do you know of any accounts or obligations of your own that you authorized Mr. Oteri to pay for you that would amount to such sum?

A. Not at all. I don't remember of any debts or anything at all.

If it is for goods that I bought it is all right. I know that I have paid for all the goods that I bought.

Q. Mr. Scalzo, did you bring any receipt from Sicily with you?

A. Yes, sir.

Q. Have you got the receipt?

A. No, sir; that is a receipt which I brought with me. It
68 dates from the trip when we went together to Sicily, and Mr. Di Christina, of Sicily, gave it to me to give to Mr. Oteri and to tell him that it was a receipt for money that he left with him.

Q. That Di Christina was not a member of the firm, was he?

A. No, sir; he was not a member in the firm, but he was the father of the member.

Q. You gave it to Mr. Oteri?

A. Yes, sir; as soon as I came back.

Q. What was the money given to Di Christini's father for?

A. I don't know, but I think it was for to ship lemons.

Q. Who made the arrangements with Di Chrestina at Palermo for the shipment?

A. Mr. Joe Oteri, because I was not there at that time. I only stayed there one or two days with Mr. Oteri at Palermo, and he (Oteri) told me everything was fixed and that I could go from there.

Cross-examination.

By Mr. HORNOR:

Q. Wasn't there a letter of credit opened there in favor of Di Christina for any fruit you would ship?

A. I don't know. I have never seen the books. All I know is that the letters of credit were opened in the name of Mr. Joe Oteri.

Q. How do you know it?

69 A. I know it by accident. I saw it in the book.

Q. What book?

A. In the book in Mr. Oteri's office.

Q. Wasn't Mr. Terni with you in Italy?

A. He went with us only as far as New York.

Q. I asked you if Mr. Terni wasn't with you in Italy.

A. Yes, sir; he was two days with us.

Q. At what place?

A. At Palermo and two or three hours at Catania.

Q. At what place does — brother do business?

A. At Barcelona, in Sicily.

Q. Annexed to your original testimony are copies of extracts of four letter- purporting to be translations from letters in Joseph Oteri's letter book. Who made such copies and translations?

A. I don't remember.

(NOTE.—Mr. Benedict will prove the letters.)

Q. You spoke in your direct testimony of a letter of credit in Barcelona. What letter of credit was that?

A. A letter of credit as is usually opened.

Q. Who was it issued by, and in favor of whom?

A. In favor of the Bank of Barcelona.

Q. In whose favor was it issued to at the Bank of Barcelona?

A. In favor of the shippers.

70 Q. How much did that letter of credit amount to?

A. I don't remember. Mr. Oteri told me he had opened this letter of credit, and when he cancelled them he also told me of the fact.

Q. Then all you know about it is what Mr. Oteri told you?

A. Mr. Oteri told me, "I have opened these letters of credit and I am going to cancel them."

Q. Do you know anything more about these letters of credit than what Mr. Oteri told you?

A. That is about all I know. I know now after we had gone into court that the letters of credit were opened in the name of Oteri. He told me so himself afterwards; and afterwards I was told by the shippers in Sicily that the letters of credit were opened in his name. Terni & Allessi told me that the letters of credit were opened in his name.

Q. Did you ever see those letters of credit?

A. I saw one letter of credit once.

Q. What was that letter?

A. I think it was a letter of credit of Mr. Oteri.

Q. Where did you see it?

A. I saw it in Mr. Joe Oteri's office, in a book, the register of the letter of credit.

Q. Did you see the letter of credit yourself?

A. I couldn't see the letter of credit. I saw the indication of a letter of credit that was in the register.

71 Q. How much was that?

A. I cannot read or write English. I have to get an idea about it.

Q. Was the writing in English or Italian?

A. I don't remember. I could never make head nor tail out of it. It was all mixed up. I was only in the office four or five times—maybe a little more.

Q. Did he ever issue a letter of credit at all?

A. Yes, sir.

Q. Do you know how much it was for?

A. I was told that there was some letters of credit for five hundred and some for a thousand and some for different sums.

Q. A thousand what?

A. Pounds sterling.

Q. Now, at that sale of Ben Onorato that you speak of where you bought goods did you buy the goods or did Mr. Torre buy them?

A. I and also Mr. Torre had to pay cash.

Q. Did Mr. Torre buy for himself or buy for you?

A. He bought for himself and I bought for myself, but if we desired to divide it up afterwards we could do so. We done it several times, and it is customary to do so.

Q. Did you do it that time?
A. Yes, sir.
Q. How much did you ever get from Mr. Joe Oteri out of the firm?
A. I don't know that he has given me a cent.
Q. Didn't you say just now that Mr. Oteri refunded you some of your travelling expenses?
72 A. I already stated that in Catania Mr. Oteri gave me money. I don't know whether it was fifty dollars or a hundred dollars or what it was. I paid him other sums, and I never knew how the account stood, and then we went to law and it has always remained. This is the way it remains.
Q. Don't you know of any other sums of money that Mr. Oteri gave you?
A. If he paid me money I don't remember.
Q. Where is your partner Di Christina?
A. At Palermo.
Q. I don't mean the father, I mean the partner of the firm.
A. He is at Palermo.
Q. When did you see him there?
A. About two months ago I saw him one day.
Q. Where was he?
A. At Palermo.
Q. Was he in his father's house or where was he?
A. I met him in the street with his father; he looked sick.
Q. You say he looked sick?
A. Yes, sir.
Q. Did you speak to him?
A. I spoke to him, but he spoke like a man that didn't have his senses about him and he looked worried.
73 Q. Wasn't he crazy?
A. He wasn't crazy, but he didn't look well.
Q. Was he in his right mind?
A. He looked as if he was in his right mind, but everybody said he was a little off.

NOTE.—Witness is shown a bill of exchange dated 25th November, 1884, drawn by the Union National Bank on Barring Bros., of London, England, for two hundred pounds sterling, on Joseph Oteri & Co., and endorsed to the order of Vincenzo Scalzo, New Orleans, the 25th November, 1884, signed Joseph Oteri, and further endorsed to be paid to the order of Andria Fazio, of Barcelona, New Orleans, 25th November, 1884.

Witness is asked whether this endorsement of the last endorsement on this note is his handwriting?
A. Yes, sir; it is my signature.

(Witness identifies his signature, marked Exhibit "D 1.")

A. This was from my brother; a thousand dollars that was sent to my brother. I don't remember whether he sent it direct or through Mr. Fazio.

Q. Are you now interested in your brother's firm of Pasquale Scalzo & G. Accetta, in Barcelona?

A. No, sir.

Q. You say that Mr. Joe Oteri sent this thousand dollars for Pasquale Scalzo?

A. Yes, sir.

Q. Wer-n't you a partner in your brother's firm at that time?

74 A. I was only for that business of fruit. That money was sent just for the fruit to be consigned here. It was just for the joint account of us both.

Q. Were you interested in any other business of your brother's firm except the business of Joe Oteri & Co.?

A. No, sir.

Q. Who sent this money to Fazzio?

A. Mr. Joseph Oteri. It was made in my name, but it was sent by Mr. Oteri.

Note.

Mr. Benedict offers in evidence the testimony taken in the original case, subject to all exceptions stated therein, taken in the case No. 11003, given by the witness, together with the documents thereto attached, and subject to the objections stated therein.

Filed 4th March, 1887.

75 *Testimonies of V. Scalzo & I. Randazzo.*

U. S. Circuit Court.

VINCENZO SCALZO *et al.*
vs.
JOSEPH OTERI. } No. 11059.

Testimony taken, by consent, on behalf of plaintiffs, at the law office of Mr. W. S. Benedict, No. 29 Camp St., New Orleans, La., on Friday, Jan. 14th, 1887, at 3 p. m.

Appearances: Mr. W. S. Benedict, attorney for plaintiffs; Mr. Joseph P. Horner, attorney for defendant.

Testimony of Mr. Vincenzo Scalzo, page 76.
" " " I. Randazzo, page 79.
Agreement as to offering other proofs, page 80.

Reported by D. O. Day, stenographer.

76 U. S. Circuit Court, Eastern District of Louisiana.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

W. S. Benedict, Esq., attorney for plaintiffs; Joseph P. Horner, Esq., attorney for defendant.

Testimony taken Friday, January 14th, 1887, at 3 p. m.

Mr. VINCENZO SCALZO (in rebuttal), sworn on behalf of plaintiffs, says:

By Mr. BENEDICT:

Q. Mr. Scalzo, I hold in my hands a paper marked Exhibit "D," filed with the answer of the defendant, Joseph Oteri, in which he says that you have drawn cash from the firm of Joseph Oteri & Co. two thousand one hundred and ninety-seven & $\frac{33}{100}$ dollars ($2,197.33). Did you draw the cash?

A. No, sir.

Q. He has stated in his testimony that he gave to you some money in Sicily. When and where did he give you money in Sicily, and how much did he give you on either occasions and on all occasions?

A. Well, I will explain the case. Before we started to go to Italy the bargain was made for Oteri, I. Randazzo, and Di Christina to give to Oteri five thousand dollars each for the business, part
77 of which was paid before we left and the balance to be paid on our return. Mr. Oteri paid the passage for me, Terni, himself, and Di Christina from St. Louis to New York.

Q. How much was that?

A. I think eighteen or twenty dollars apiece; I don't remember.

Q. What was the next amount that he paid?

A. The next amount he paid was for the tickets for Messina for myself and Di Chrisitna, about ninety dollars each, and his tickets for himself and Terni to Liverpool.

Q. Now, when you were in Sicily, you stated that you had been quarantined, and that you had some money from Oteri. When was the first time in Sicily that you got any money from him, and how much?

A. De Christina and myself were thirteen days quarantined at Gaeta, and I paid fifteen francs a day for each of us, and some small additions; & after the quarantine I went to Messina, and at Messina I bought a ticket for myself and Di Christina, and we went to Palermo. At Palermo I saw Oteri, and I gave him the list of expenses I had incurred, and Mr. Oteri paid me.

Q. How much?

A. I don't remember exactly; between seventy-five and a hundred dollars. I gave him the expense list.

Q. Did you get any money from him in Sicily or in Europe; and, if so, where did you get it from him?

78 A. Well, at Palermo we agreed that Mr. Oteri and Mr. Terni go to Messina and Di Christina and I remain at Palermo. After that Mr. Oteri said go to Catania. After going to Catania I got a telegram from Mr. Oteri, saying: "Meet me on the steamer. I will be in Catania to-morrow." Well, the next day I went to the steamer and met Mr. Oteri, and he said, I am going to Malta. Then I said, I have got to pay the passage home for Di Christina and me, and I asked him for money, and he gave me two hundred dollars.

Q. After you came back to New Orleans how much money had

been advanced by Mr. Joseph Oteri for you and Di Christina together for all the expenses from the time you left St. Louis until you came back to America?

A. When I came back I brought a list of all the expenses. I bought tickets for me and Di Christina from New York to St. Louis, and I bought the ticket for Di Christina from St. Louis to New Orleans.

Q. And he remained in New Orleans?

A. Yes, sir; and when I came here I gave the list of expenses to Mr. Oteri.

Q. How much was the total amount of your expenses and Di Christina's expenses?

A. About six hundred dollars altogether. I don't exactly know how much it was, because I have not any papers or documents to show. I hav-n't any receipts. I gave Oteri a memorandum of all the expenses.

Q. That was both for you and Di Christina?

A. Yes, sir.

79 Q. About six hundred dollars for the two?

A. I don't remember exactly, but I think it was six hundred dollars.

Q. Mr. Oteri said in his evidence that he had given you a check at one time for one thousand dollars. What was that check for, and what was done with that check?

A. When I came back from Italy I went to the office of Mr. Oteri, and I spoke about some shipments for joint account of the Bank of Barcelona and our firm that I had advices of. Joe Oteri gave me a check for one thousand dollars to make advances on said shipment, and I got the exchange. It was forwarded for account of the firm, and the shipment was made and received by the firm, and that business was charged up against that advance and shipment, and the shipment resulted in a loss.

No cross-examination.

Mr. I. RANDAZZO, being sworn in rebuttal on behalf of plaintiffs, says:

By Mr. BENEDICT:

Q. Mr. Randazzo, the last time we took testimony there was a letter and a statement introduced in evidence concerning some criminal proceeding taken against you in Sicily. The statement

80 of the criminal proceeding is very vague and indefinite and does not show anything on the face of it which would give us any accurate information. Will you be kind enough to tell us what that proceeding was against you?

A. It was because I was working for Baron Bordanora. I had the garden close to his. In this garden there was an overseer who had a daughter, and I was courting her, and every time the Baron went there he had connection with her. I found it out, and I did not want her any more. As I did not want her, and this party being an aristocrat, he wanted me to marry her, and I wanted to

have him arrested. I told him to pay me everything that he owed me, and he did not want to pay me. Then I found him and made him pay by force, and he paid me.

Q. And then the Baron had you arrested?
A. Yes, sir; he had me arrested.
Q. And that is the crime you are charged with?
A. That is the crime I was charged with.
Q. Did the Baron wed or marry the girl?
A. No, sir; he wanted me to marry her.

No cross-examination.

Agreement.

Counsel for plaintiffs and defendant have agreed that either party may offer any documentary evidence on the trial that has been omitted.

81 *Testimony of Mr. V. Scalzo, Taken in No.* 11003, *with Documents Attached Thereto.*

United States Circuit Court, Eastern District of Louisiana.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Testimony taken on behalf of the plaintiffs, by consent, before Edward R. Hunt, Esq., United States commissioner, this 6th day of May, 1885.

Present: W. S. Benedict, Esq., for plaintiffs; Frank W. Baker, Esq., for defendant.

VINCENZO SCALZO, sworn for the plaintiff-, says:

By Mr. BENEDICT:

Q. Where do you live?
A. In St. Louis, Missouri.
Q. Are you going away soon?
A. Yes, sir.
82 Q. When?
A. I expect to go some time this week, when I am ready.
Q. Where are you going?
A. I am going to St. Louis, and from there I am going to Europe.
Q. When do you expect to be back in St. Louis?
A. In about three or four months; I cannot say exactly.
Q. Do you know Mr. Randazzo, the gentleman sitting there?
A. Yes, sir.
Q. Do you know Mr. Joseph Oteri, the gentleman sitting here?
A. Yes, sir.
Q. It appears that on the 24th June, 1884, you gentlemen made an act of copartnership before James Fahey, notary public, to carry

on a general commission business and to import fruits from Europe, each putting in a capital of $5,000, as fully detailed in the act of copartnership, under the firm name of Joseph Oteri & Co. Now, after you made that copartnership with Randazzo, Di Chrisitina, and Joseph Oteri, did any of you go to Europe; if so, how many went there?

A. I went myself, Mr. Oteri, and Mr. Di Christina.

Q. Was there anything done in Europe concerning the business of the firm of Joseph Oteri and Co.? If so, state what was done.

A. Mr. Terni, the book-keeper, came to Europe with us also, making four of us all together, and being at New York two of us intended to go by Liverpool, Joseph Oteri and Mr. Terni, the book-
83 keeper, and myself and Mr. Di Christina going direct to Italy.

Q. Which way did you go?

A. I went direct for Italy; stopped at Gibraltar, and went from Gibraltar to Genoa, and from Genoa to Naples, and from Naples to Sicily. Before I went into Sicily I had to go into Giata to make a ten days' quarantine; then I went into Sicily.

Q. What was the object of all of you going into Italy, Sicily, and other places—for what purpose?

A. To make arrangements to import fruit on commission.

Q. For whom?

A. For the company—Joseph Oteri, Mr. Randazzo, Mr. Di Christina, and myself. When I got to quarantine I got a telegram from Joseph Oteri, at Palermo, "When you get to Messina come back right away to Palermo."

Mr. Baker, for the defendant, calls for the telegram referred to.

Q. Have you got that telegram?

A. I have not. I do not keep telegrams. When I got to Palermo Joseph Oteri said, "Everything is fixed; you may go back to Messina;" and I said to him, "No; I cannot go right away; I am sick." Then he said to me, "Well, stop right here unless you are well. I will go to Messina, and when you are ready I may be with you in Messina. When you leave Palermo pass Catania and then telegraph to me." When I got to Catania I telegraphed to Mr. Oteri, saying, "I am here; when will you come?" and he answered me,
84 "To-morrow; you be on the steamer." I don't remember the name of the steamer now.

Mr. Baker, for defendant, objects to the above testimony as inadmissable under the pleadings.

WITNESS: The next day at six o'clock, at Catania, I went on board the steamer and saw Mr. Joseph Oteri and the book-keeper.

At this stage of examination it was found necessary to introduce an interpreter, Mr. Albert Berthoud, he being proficient in the Italian language, and the remainder of this testimony was written down under the direction of the interpreter, the witness speaking in the Italian language to the questions propounded, and the interpreter being sworn.

Q. How long did you stay at Catania?

A. Seven days.

Q. Where did Mr. Oteri and the book-keeper go?

A. When I saw Mr. Oteri and the book-keeper they told me they were going back to America.

Q. What agreement was made between Joseph Oteri and yourself as to your remaining there?

A. Mr. Oteri said, "We have arranged everything that had to be arranged in Messina, and you can come back with us if you please. If you do not wish to come back, go and see your folks, and then come back."

Q. When did you come back to America?

A. I do not remember exactly, if it was in September.

85 Q. When was the fruit shipment received for the firm of Joseph Oteri & Co. under the contract of partnership that you made?

A. The first shipment was made by my brother in one of the ships belonging to Mr. Taglivia. I don't remember its name.

Q. Do you remember the date?

A. About October. I do not remember exactly.

Q. When you came back to New Orleans what did you ascertain in regard to what was going on by Mr. Oteri concerning the firm and the shipments, and how did you find it out?

Mr. Baker objects to anything the witness found out except what he found out from Mr. Oteri himself.

A. The first thing was that I received a letter from Mr. Oteri whilst I was in St. Louis telling me to bring money, because we had each given in $2,000 before our departure and he wanted the balance.

Mr. Baker calls for the letter reffer-ed to.

Q. If you have that letter will you send it to me?

A. Perhaps I may find it in St. Louis. If I have it in St. Louis I will send it to you.

Q. Now, when you came here what did you find out as to what Mr. Joseph Oteri was doing, and also about the business of the firm that had been arranged in Europe?

86 A. Mr. Oteri told me that he did not see any money in this business and did not think it would pay, and the best thing we could do would be to settle it up, and I said: "I do not see how we can separate now after all the expense we have been through."

Q. How long was it after that before you found out in any way that Mr. Oteri was writing to Europe telling parties that he was not satisfied with his partners?

Mr. Baker objects to the statements from any letters unless the letters themselves are produced.

A. I gave him $3,000. I had already given him $2,000. He agreed that we should go on working and I should return to St. Louis in about a month or two. I don't remember exactly how long. I came back to New Orleans and ascertained that Mr. Oteri

had been getting letters of credit in his own name. The book-keeper in the meantime had left. The book-keeper having left, Mr. Alizio was engaged for a couple of weeks.

I asked Mr. Alizio, with regard to the books, if he could find out from them whether there was any profit in the business or not, and Mr. Alizio told me that in the books it appeared that Mr. Oteri was working in his own name, and that letters had been writ-en against me and my partners, Randazzo and Di Christina.

Mr. Baker objects to all the above, not only as hearsay, but also as being irrelvant.

87 Mr. Benedict, for the plaintiffs, now calls for the letter books of Joseph Oteri or Joseph Oteri & Co.

WITNESS: I wrote to Messina to find out whether any letters were written against me and my partners, and from a friend of mine I received this letter, which I now produce.

Mr. Benedict offers in evidence the original extract from the letter referred to, and also its translation, as follows:

From original written by Mr. Oteri.

(Date, 7 Oct., '84.)

"During my short stay in Sicily I came to the knowledge that some of my partners did not enjoy a good reputation, and absolutely objecting to my name coming in contact with people who were not of immaculate respectability I have decided to dissolve, and all transactions will therefore be conducted in my name alone."

The above paragraph is from a letter of Joseph Oteri, of New *Oteri*, to L. Perandello, of Messina.

Mr. Baker objects to the above as irrelevant.

Q. Did you obtain any copies of any of the letters that had been written by Mr. Joseph Oteri from his letter book?

A. Yes, sir; I received some.

Q. Look at these letters and state whether you know them to be the same that you furnished to me.

88 A. Yes, sir; they are the ones I received.

Mr. Benedict offers the following letters A & B:

Copies of Letters A & B.

NEW ORLEANS, *October 7th*, 1884.

M. Costarelli, O. Ci, Messina:

Whilst I was in Sicily I discovered that some of my partners were not responsible. I have dissolved the copartnership legally, so business will continue on my exclusive name only.

(Signed) JOSEPH OTERI.

(Fo. 25.)

Letterio Carro, Messina:

Until Mr. V. Scalzo's return business will have to be done under my name only for as you know or rather will soon know Messrs. Randazzo and Di Christina will not be connected with my business.

(Signed) JOSEPH OTERI.

89 Fo. 17. NEW ORLEANS, *October 7th*, 1884.

G. C. Hirzel, Jr., Palermo.

Although I cannot officially notify you of my dissolution from all my partners I however intend to begin business under my own name only, and as you will see the credit and all are under my own name.

(Signed) JOSEPH OTERI.

Fo. 15. NEW ORLEANS, *October 7th*, 1884.

To Baller & Co., Messina.

Having heard during my voyage in Sicily that one of my partners had not good reputation, I separated from him and therefore business will continue under my name only.

(Signed) JOSEPH OTERI.

90 Mr. Baker objects to the above letters as irrelevant under the pleadings.

WITNESS: When I heard from Mr. Allizio that the business was done in the name of Joseph Oteri, and that letters had been written against us, and that letters of credit had been cancelled, I asked Mr. Oteri what he intended to do.

Q. What was Mr. Oteri's reply?

A. Mr. Oteri answered, "I do not wish to work any more."

Q. Did you ask Mr. Oteri to give you back your capital?

A. I asked Mr. Oteri to give us back the money, and Mr. Oteri said, "When the accounts are rendered and made up" then he would give the money. And Mr. Oteri told me that there was no bookkeeper to make up the accounts. I then asked him whether he would allow us to bring somebody to examine the books and accounts to see whether what was told us by Mr. Alizio was true in the letter book, and Mr. Oteri answered, "You are at liberty to do it when you wish it; bring somebody to examine the books and the correspondence." Then we brought Mr. Allizio, who had already worked there for two weeks, and I said to Mr. Oteri, "Mr. Oteri, here is Mr. Allizio, the person we brought to examine the books." Then Mr. Oteri brought a book, and then as Mr. Alizio opened it Mr. Oteri closed it and took it away saying, "What are you doing?" Mr. Oteri said he would not let us look at the account in the books; that when he was ready and was through with all the accounts rendered he would let us then. But in the meantime he would

91 count the folios in the book and give these two gentlemen receipts for as many folios as were in the book, but he would not let them look at the books, and I answered, "I wish to see the letters and how this correspondence is; I do not wish to see the folios." And Mr. Oteri said no, and took the books and closed them in an (iron) safe-box and said, "If you want the accounts you must go to court." Then I said, "Mr. Oteri, according to our contract you have to render us an account every month; besides we are at liberty whenever we chose to look at the books. Why do you refuse?" We then said to the gentlemen present, "You be witness

that Mr. Oteri refuses to render accounts to us or let us look at the books."

Q. Had any shipments or consignments of fruit been made to the firm at that time?

A. Yes, sir.

Q. Do you know how many?

A. I don't know how many; the catalogue of them is here.

Q. Did you give to me a statement of the names of the persons with whom the firm of Joseph Oteri & Co. made contracts in Europe?

A. Yes, sir.

Q. Will you look at that statement and state if that is the one?

A. Yes, sir; it is.

Mr. Benedict offers in evidence the document marked "C."

Mr. Baker objects to it on the ground that the plaintiffs cannot manufacture evidence in their own favor. It is not original evidence.

92 Q. Had any shipments come here for the firm of Joseph Oteri & Co. which Mr. Joseph Oteri would not attend to?

A. Yes, sir.

Q. Tell us the circumstances about that and what occurred.

A. The time that we instituted proceedings against Joseph Oteri there was a steamer arrived with a thousand or more boxes shipped by my brother in Sicily, and the auctioneer asked me who was going to attend to the sale, and I answered him, "I did not know anything about it;" so the fruit was not sold that day.

Q. Was Mr. Joseph Oteri there to attend to it?

A. No, sir.

Q. What happened the next day?

A. I went to see my lawyer and told him the circumstances, and my lawyer told me that under the circumstances we ought to attend to the sale if Mr. Oteri did not, because we were as much responsible to pay for that fruit as Mr. Oteri was.

Mr. Baker objects to the conversation of the witness with his lawyer as irrelevant.

Q. What then did you do the next day about the fruit?

A. The auctioneer asked again who was to attend the sale of the fruit of Joseph Oteri & Co., and I answered the auctioneer that I would attend to the sale for account of whom it might be.

Q. Did you attend to the sale of the fruit?

93 A. Yes, sir.

Q. What became of the money received from the sale of this fruit?

A. Mr. Oteri received it.

Q. Who gave it to him?

A. The auctioneer gave it to Mr. Oteri.

Q. Was there any other shipment like that attended to by you, or was that the only one?

A. That was the only one.

Q. You have been in the fruit business for some length of time?
A. Fourteen years.
Q. How has your credit been?
A. My credit has always been good.
Q. Have you ever gone to protest?
A. No, sir.
Q. What has been the effect of the action of Mr. Oteri upon your credit?

Mr. Baker objects to this as irrelevant, as there is no such claim made in the pleadings.

A. Mr. Oteri told the auctioneer——

Mr. Baker objects to the answer as irrelevant and not responsive.

WITNESS: Mr. Oteri told the auctioneer that if Mr. Scalzo or Mr. Randazzo bought the fruit from the firm they would have to pay cash for it.

Q. Did other persons buy fruit from the auctioneer at the same time and were they given credit, or not?

A. Yes, sir.

94 Q. How much credit were they given; how long a time was credit given to outside parties?

A. Thirty days.

Q. Was that the usual delay given to purchasers of fruit at sales of cargoes from foreign vessels?

A. It is done with those who have good credit; those who have not good credit have to pay cash; I have bought here for the last five years, sometimes as high as $5,000 or $10,000 from one steamer, and had always from thirty to sixty days credit, and at one time Mr. Oussimano gave me credit for $45,000.

Q. How did these cargoes of fruit come consigned from Europe after Joseph Oteri had written these letters; did they come consigned to Joseph Oteri & Co., or to Joseph Oteri alone, or how?

A. They came to Joseph Oteri—from Messina, Palermo, and Catania—Joseph Oteri.

Q. Were those that came to Joseph Oteri come as shipments of fruit from persons with whom the firm had made contracts?

A. I don't know what arrangements he had made, because he did not let me go with him to any place in Italy; I do not know what arrangements he made. Those that came to the name of Joseph Oteri & Co. were those shipped by my brother, the Bauca, Barcelona, and Di Christina.

Q. Did all the others come in the name of Joseph Oteri?

A. Yes, sir; in the name of Joseph Oteri.

95 Q. Has Joseph Oteri ever returned any of the capital that you and Randazzo and Di Christina put into the concern?

A. No, sir.

Q. Has he ever rendered any account?

A. No, sir; I asked him and he refused all the time.

Mr. Benedict offers in evidence the act of copartnership between

Joseph Oteri, Vincenzo Scalzo, I. Randazzo, and Antonio Di Christina.

Filed 4th March, 1887.

96 EXHIBIT "C."

Dates & Sales of Cargoes of Fruits.

Filed 4th March, 1887.

Catalogue of fruits sold by Ben. Onorato, auctioneer, for ac. Joseph Oteri & Co.

Steamer Coronilla, December 22, 1884.
" Camellia, January 15, 1885.
" Edgar, January 30, 1885.
" Irthington, February 9, 1885.
" Bessie Morris, February 26, 1885.

97 EXHIBIT "C."

With whom were contracts made in several ports of Sicily.

G. Di Cristina, Palermo, by J. Oteri, credit sent, 10 | 10 | 84.
G. C. Hirzel, Jr., " " 10 | 7 | 84.
Salvatore Gioe, " " "
R. Filiberto & Co., " " "
M. Costarelli, of Messina, " "
Ferd. Baller & Co., Messina, " "
Andrew Pirandello, " " "
Letterio Tarro, " " "
Banca Barcellonese, Barcelona, by V. Scalzo.
P. Scalzo, Millazzo, do.

What was shipped by any ac. above and *in* when.

G. Di Cristina, S. S. Coroniella, 635 boxes fruit, sold Dec. 23, '84.
" Camellia, 741 " " " Jan. 16.
" Irthington, 987 boxes fruit, to arrive.
Emma Ponticielli, S. S. Coroniella, 274 " "
F. P. Calcagno, " Camellia, 74 " " } Sold Jan. 16.
R. Filiberto & Co, " Jason, 100 T. sulphur, Nov. 19.
" Irthington, 4,000 boxes fruit,
" a lot almonds, } To arrive.

98 S. Gioe, Coronilla, 1,460 boxes fruit, sold Dec. 23, '84.
Camiellia, 974 " " " Jan. 16.
G. Vadala, Corronilla, 135 " "
P. Scalzo, Jason, 1,100 " " } Sold Nov. 19, through
G. Accetta & Co., Edgar, 931 (import) " " } B. K. Barcelona;
Mr. Cambria Bonomo, do., 251 (import) " " } arrived Jan. 26.

What disposition was made thereof and in whose name.

Up to Camellia all sold in name of J. Oteri & Co., under his responsibility.

Fruit by Edgar not sold on ac. of absence of J. O. at sale and his not having entered in custom-house.

Filed 4 March, 1887.

99 CONSULATE OF THE UNITED STATES,
PALERMO, ITALY, *October 12th*, 1886.

I certify that the papers hereto annexed constitute copies of a commission issued by the circuit court of the United States for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, to any consul, vice-consul, or any other officer or officers authorized to administer affidavits and oaths in the Island of Sicily, the original of which I have this day sent to the consul of the United States at Messina as his authority to take the testimony of certain persons therein named, as well as interrogatories and cross-interrogatories.

(Signed) PHILIP CARROLL,
[SEAL.] *Consul.*

100 U. S. Circuit Court, Eastern District of La. In Equity.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Interrogatories to be propounded to the witnesses hereinafter named, residing in Sicily, to be examined under and by virtue of an order of court to that effect by the United States consul, vice-consul, commercial agent, or other proper officer at the respective places named in Sicily, their answers to be given to the annexed interrogatories.

To G. Di Cristina, at Palermo, Sicily; S. Gioe, of same place; G. C. Hirzel, of same place, and R. Filiberto & Co., or either member of said firm, at said place:

1st Interrogatory. Do you know or did you know Joseph Oteri and Antonio Di Cristina or Vincenzo Scalzo or Iguazio Randazzo? If so, when and where did you become acquainted with them and when did you last see them or either of them?

2nd Interrogatory. Did you ever have any business transactions with them individually or associated together as a firm? If so, when and what were such transactions? Please state how the same originated, how the same ended.

3rd Interrogatory. Did you at any time make any statement to Joseph Oteri verbally or in writing of or concerning Vin-
101 cenzo Scalzo, A. Di Cristina, or Iguazio Randazzo or either of them as to their business character, their social position, their reputation as men or as merchants; and, if so, what did you say, where and when was it said, in whose presence was it stated?

4th Interrogatory. Did you say to Joseph Oteri or Hector Terni or either of them that A. Di Cristina was a "dude" and I. Randazzo was an "escaped convict" or "murdered," and that V. Scalzo was an "immoral man," or did you say anything to that effect from which

any person could make the assertion of words to the effect of those stated? If not, what did you say to Joseph Oteri or Hector Terni in regard to such persons?

5th Interrogatory. Were you at any time requested by Joseph Oteri—and, if so, when and for what reasons—to do business with him alone and not with his firm of Joseph Oteri & Co., which was composed of himself, V. Scalzo, I. Randazzo, and A. Di Cristina?

6th Interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) W. S. BENEDICT,
Sol. for Comp'ts.

102 Interrogatories as above propounded to are likewise to be answered by F. Baller & Co., or either member of said firm, M. Costorelli & Sons, Andrea Parrandello, and L. Tario, all of Messina, Sicily; to the president of the Bank of Barcelona, Sicily, and to P. Scalzo, of Milazzo, Sicily.

(Signed) W. S. BENEDICT, *Att'y.*

V. SCALZO *et als.* *vs.* JOSEPH OTERI. } No. 11059.

U. S. Circuit Court, Eastern District of Louisiana. In Chancery.

Cross-interrogatories to be propounded to G. Di Cristina and others at Palmero, F. Baller & Co. and others at Messina, the president of the Bank of Barcelona, Sicily, and to P. Scalzo, of Milazzo, for the complainants:

First. What is your full name, age, residence, and occupation, how long have you there resided and been so employed?

Second. Did you ever hear anything from any one derogatory to the characters of Vincenzo Scalzo, A. Di Cristina, or Iguazio Randazzo? If yea, when and where did you hear it, and what
103 was it that you heard? Did what you heard have any influence upon your business relation with the firm of Joseph Oteri & Co., or influence you to refuse to do business with that firm? Did you ever communicate to Joseph Oteri what you had so heard about his partners?

Third. What is the reputation, morally and as business men, in Italy, of said Vincenzo Scalzo, Antonio D. Cristina, and Iguazio Randazzo, and how do you know the same?

Fourth. Did you ever do business with the firm of Joseph Oteri & Co.? Did you ever do any business with Joseph Oteri alone? If yea, what business? How were your shipments made? If to order, why not to Joseph Oteri or Joseph Oteri & Co.? Did you draw drafts for your shipments? Did you draw those drafts on Joseph Oteri or Joseph Oteri & Co.?

Fifth. Did you ever see a letter or letters from New Orleans containing information as to the bad character of Vincenzo Scalzo, Antonio Di Cristina, and Iguazio Randazzo, or containing charges against them? If yea, where did you see such letter or letters? In whose hand? When? Who was said letter or letters from? To whom were they addressed? Where is said letter or where are said letters now? What was said in said letters about said Scalzo, Di Cristina, & Randazzo? Did you ever tell Joseph Oteri that you had seen such letters?

Sixth. Do you know Antonio Di Cristina? For how long? What is his age? Where is he now? With whom is he living?
104 What is his occupation? How long has he been so employed?

(Signed) JOSEPH P. HAND (HORNOR),
FRANCIS B. LEE,
Soli's for Def't.

Motion and affidavit named and above cross-interrogatories propounded all on the express condition precedent that solicitor per complainant shall modify his last interrogatory to conform to equity rule No. 71.

New Orleans, 23 July, 1886.

(Signed) JOSEPH P. HAND (HORNOR),
FRANCIS B. LEE,
Solic's for Def't.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Judicial Circuit Holding Session in and for Eastern District of Louisiana.

To any consul, vice-consul, or any other officer or officers authorized to administer affidavits and oaths in the Island of Sicily:

Know ye that, reposing special trust and confidence in your
105 integrity and ability, we hereby authorize and require you that you call and cause to come before you G. Di Christina, at Palermo, Sicily; S. Gioe, of same place; G. C. Hirzel, of same place, and R. Filiberto & Co., or either member of said firm; M. Costarelli & Sons, Andrea Parandello, and L. Tario, all of Messina, Sicily, to the president of the Bank of Barcelona, Sicily, and to P. Scalzo, of Milazzo, Sicily, and them duly examine on the annexed interrogatories, *an* oath, touching and concerning certain matters and things in a case now depending in the said court, wherein V. Scalzo *et als.* are complainants and Joseph Oteri is defendant; and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this

24th day of July, anno Domini 1886, and the Independence of the United States of America the 111th year.

(Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER, *Deputy Clerk*.

106 Deposition of G. Di Cristina, of Palmero, Italy, in the case of V. Scalzo *et als.*, *and* etc., *and* etc., No. 11059, now pending before the circuit court of the United States, fifth judicial district of Louisiana.

Answer to 1st interrogatory. Yes; in Palermo; I saw Scalzo in 1886, Oteri in 1884, Randazzo in 1883, and Di Cristina I see every day.

Answer to 2nd interrogatory. Yes; in 1884, at the request of Oteri, I became the agent of the firm in Palermo; they gave me one letter of credit, and, upon them withdrawing it in February, 1885, I ceased to be their agent of the firm and then became connected with the firm of Randazzo & Di Cristina.

Answer to 3rd interrogatory. No.

Answer to 4th interrogatory. No; nothing.

Answer to 5th interrogatory. I was requested by Joseph Oteri to do business with him alone, but I declined; I don't know the reasons for this request of Oteri, unless it was to get all the business into his own hands without the other members of the firm having an interest therein; the request, however, was made by Oteri after the firm had withdrawn the letter of credit from me.

107 Answer to 6th interrogatory. I have nothing to say in favor or against the firm, excepting that I know Joseph Oteri to have been irregular, dissipated, and dishonest; and I know Iguazio Randazzo to be an honest, upright man for the last fifteen years. I also know A. Di Cristina is an honest, upright gentleman, and I can say the same of V. Scalzo (Vincenzo).

(Signed) GAETANO DI CRISTINE.

CONSULATE OF THE UNITED STATES,
PALERMO, ITALY, *October 8th*, 1886.

Sworn to and subscribed before me this 8th day of October, 1886, at the consulate of the United States in Palermo, Italy.

[SEAL.] (Signed) PHILIP CARROLL, *Consul*.

Cross-Examination of G. Di Christina.

Answer to 1st question. My full name is Gaetano Di Christina; my age is 51 years; I reside in Palermo; I have no occupation; I live on my money; I have always resided in Palermo, having been born there.

108 Answer to 2nd question. I never heard anything against the characters of Vincenzo Scalzo, A. Di Christina, or Iguazio Randazzo. I have, however, heard much in their favor. I have never had any communication with Joseph Oteri in any way of what I heard about his partners.

Answer to 3rd question. The reputation, morally and as business men, of Vincenzo Scalzo, Antonio Di Christina, Iguazio Randazzo, in Italy, is good. This I know personally and by general opinion where they are now.

Answer to 4th question. Yes; when I was their agent I never did business with Joseph Oteri alone. At times I shipped to Joseph Oteri and at others to Joseph Oteri & Co. This was done by order of Joseph Oteri, who first gave me a letter of credit from himself personally, but afterward gave me a letter of credit from the firm of Joseph Oteri & Co.

I made no shipments to the firm or on its behalf to "order." All shipments were as I have stated. For shipments I drew drafts on Joseph Oteri and on Joseph Oteri & Co. from time to time. I never have seen any letter or letters from New Orleans reflecting on the character- of Vincenzo Scalzo, Antonio Di Christina, and Ignazio Randazzo nor any making charges against them excepting one addressed to Carmelo G. Lagano, of Palermo, which said that Vincenzo Scalzo, Antonio Di Christina, and Ignazio Randazzo were
109 bad and dishonest men. I saw the letter of which I speak about the end of 1885. I saw it in Mr. Carmelo G. Lagano's hands. The letter was from Joseph Oteri; it was addressed to Lagano & Pojiro. The letter is now at the firm of Lagano & Co., Palermo, I believe. I do not remember exactly what the letter contained, but it denounced the persons named—Scalzo, Di Christina, and Randazzo—as dishonest, and etc. I never told Joseph Oteri that I saw the letter.

Answer to 6th question. I know Antonio Di Christina for twenty years. His age is 24 years or thereabouts. He is now in Palermo, living with his father and mother. I do not know as to his employment or if he has any.

(Signed) GAETANO DI CRISTINE.

CONSULATE OF THE UNITED STATES,
PALERMO, ITALY, *October 8th*, 1886.

Sworn to and subscribed before me this 8th day of October, 1886, at the consulate, in Palermo, Italy.

[SEAL.] (Signed) PHILIP CARROLL, *Consul.*

110 Deposition of F. Fillberto in the case of V. Scalzo *et als. vs.* Joseph Oteri, now pending before the circuit court of the United States, fifth judicial circuit of Louisiana.

Answer to 1st interrogatory. I know Joseph Oteri, Antonio Di Christina, and Vincenzo Scalzo, but I do not know Ignazio Randazzo. I first knew them in 1884, when they came to Palermo, in July of that year. I think I last saw them about that time, save Christina, whom I have seen about seven months since.

Answer to 2nd interrogatory. I have had business with them as the firm of Joseph Oteri & Co., but not as individuals.

My transactions with them took place in October and November, 1884, and consisted of shipments of brimstone, almonds, and green

fruit. The cause of my making shipments to the firm was that they gave me a letter of credit for that purpose. I ceased to do business with the firm because the credit was cancelled. Joseph Oteri wrote me about February, 1885, that he had trouble with his partners, and that the firm was dissolved, and that he was carrying on the business in person and on account of himself solely.

Answer to 3rd interrogatory. I never made any statement in writing or otherwise to Joseph Oteri concerning Vincenzo Scalzo, A. Di Christina, or Ignazio Randazzo in any manner or sense.

111 Answer to 4th interrogatory. I never said a word, good, bad, or indifferent, to Joseph Oteri about Christina, Randazzo, or Scalzo.

Answer to 5th interrogatory. Joseph Oteri never requested me to do business with him alone and not with his firm.

Answer to 6th interrogatory. I know only as stated; no more.

(Signed) F. FILIBERTO.

CONSULATE OF THE UNITED STATES,
PALERMO, ITALY, *October 9th*, 1886.

Sworn to and subscribed before me this 9th day of October, 1886, at the consulate, in Palermo, Italy.

[SEAL.] (Signed) PHILIP CARROLL, *Consul.*

112 Cross-examination of F. Filiberto in the case of V. Scalzo *vs.* Joseph Oteri, now pending before the fifth judicial circuit court of the United States, Louisiana.

Answer to 1st question. My full name is Fredrico Filiberto; my age is 47 years; I reside in Palermo; I am a merchant; I have resided in Palermo all my life.

Answer to 2nd question. I never heard anything against the characters of Vincenzo Scalzo, Antonio Di Christina, but it is publicly known that Ignazio Randazzo was tried for a grave crime and condemned to be hanged, but afterwards was accorded, I think, a new trial, and was sentenced to fifteen or twenty years in the penitentiary at hard labor, whence he appears to have escaped and gone to the United States.

Answer to 3rd question. Scalzo is little known in Palermo. Christina appears to be a good young man. The reputation of Randazzo in Palermo is bad. I know this personally and by public opinion.

Answer to 4th question. I have, as stated in my direct testimony, done business with the firm of Joseph Oteri & Co. I never did business with Oteri alone. My shipments were made to Joseph Oteri & Co. The second letter of credit from Lazard Bros., of London, directed that I should ship to "order," but the American consul at Palermo was suspicious that something was wrong, and refused to issue a certificate "to order;" hence I was compelled to

113 make the shipments to Joseph Oteri & Co. I drew drafts on Lazard Bros., according to my letter of credit from Joseph Oteri & Co.

Answer to 5th question. I never saw any letter from New Orleans for or against Scalzo, Christina, or Randazzo.

Answer to 6th question. I know Antonio Di Christina about four or five years. His age, I think, is about 22 or 23 years. I do not know where he is now or with whom he is living. I do not know his occupation now. Previously he assisted his father in shipping fruit.

(Signed) F. FILIBERTO.

CONSULATE OF THE UNITED STATES,
PALERMO, ITALY, *October 9th*, 1886.

Sworn to and subscribed before me this 9th day of October, 1886, at the consulate of the United States in Palermo, Italy.

(Signed) PHILIP CARROLL, *Consul.*

114 Deposition of S. Gioe in the case of V. Scalzo and Joseph Oteri, pending before the fifth judicial circuit court of the United States, *of* Louisiana.

Answer to 1st interrogatory. I know Joseph Oteri, Antonio Di Christina, and Vincenzo Scalzo, but I do not know Ignazio Randazzo. I know Christina about eight months, Oteri about two years, and V. Scalzo about one or two years, and I became acquainted with them in Palermo. Come to think of it, I know Christina since he was a boy. It is two years since I last saw Oteri and about two months since I saw Scalzo and eight months since I saw Christina.

Answer to 2nd interrogatory. I first had business with Joseph Oteri personally and afterwards with Joseph Oteri & Co. It is about two years since, and the transaction consisted of shipments of green fruit, first, as stated, to Joseph Oteri and after to Joseph Oteri & Co. The shipments were made at the request of Oteri and terminated because of the withdrawal of the letter of credit which had been given me by him.

Answer to 3rd interrogatory. I never made any statement, verbally or in writing, for or against Vincenzo Scalzo, A. Di Christina, or Ignazio Randazzo to Joseph Oteri in any sense.

Answer to 4th interrogatory. I never said anything about the persons named to any one.

115 Answer to 5th interrogatory. My letter of credit was from Joseph Oteri and not from the firm, but I do not recollect why I shipped at first to Joseph Oteri and afterwards to Joseph Oteri & Co.

Answer to sixth interrogatory. I can state nothing to the advantage or disadvantage of the firm or persons named in the statement which I have just made.

(Signed) SALVADORE GIOE.

Sworn to and subscribed before me this 11th day of October, 1886, at the consulate of the United States, Palermo, Italy.

[SEAL.] (Signed) PHILIP CARROLL, *Consul.*

116 *Cross-Examination of S. Gioe in the Case of V. Scalzo and Joseph Oteri.*

Answer to 1st question. My name is Salvatore Gioe; my age is 45 years; I have resided in Palermo all my life; I am a fruit-dealer.

Answer to 2nd question. I never heard a bad word from any one about them. Randazzo I do not know. I never communicated with Joseph Orteri as to what I heard, having heard nothing.

Answer to 3rd question. I do not know anything about the reputation of Vincenzo Scalzo, Antonio Di Christina, or Ignazio Randazzo in Italy.

Answer to 4th question. I did business with the firm of Joseph Oteri & Co. and with Joseph Oteri, which consisted of shipments of fruit to Joseph Oteri and Joseph Oteri & Co., and not to "order." For these shipments I drew drafts, but I do not remember upon whom.

Answer to 5th question. I never saw a letter from any one reflecting upon the character of Scalzo, Di Christina, or Randazzo, nor have I ever told Joseph Oteri I had seen such letter or letters.

117 Answer to 6th question. I do not know Antonio, but I know Antonio Di Christina since he was a boy. His age is about 24 years. I do not know where he is now. I do not know with whom he lives. He is a dealer in green fruit.

(Signed) SALVADOR GIOE.

Sworn to and subscribed before me this 11th day of October, 1886, at the consulate of the United States in Palermo, Italy.

[SEAL.] (Signed) PHILIP CARROLL, *Consul.*

118 Deposition of G. C. Hirzel in this case of V. Scalzo and Joseph Oteri, now pending before the fifth judicial circuit court of the United States in the State of Louisiana.

Answer to 1st interrogatory. I only know Joseph Oteri. I once saw V. Scalzo about two minutes; no more. The others I do not know. I became acquainted with Oteri about two years since, about which *I* time I saw, as stated, V. Scalzo in Palermo. I have not seen them in about two years.

Answer to 2nd interrogatory. Mr. Oteri proposed that I should do business with him, but I declined, because the prices at that time in New Orleans were too low to suit me, and much lower than I was getting in other places.

Answer to 3rd interrogatory. I never made any statement whatever to Joseph Oteri of or concerning Vincenzo Scalzo, A. Di Christina, or Ignazio Randazzo in any sense, for the reason I know little or nothing about them, only having met Scalzo, as stated, for a few minutes.

Answer to 4th interrogatory. I never said to Joseph Oteri nor, indeed, to any other person anything whatever relative to Christina, Randazzo, or Scalzo. The word "dude" is not known to me.

119 Answer to 5th interrogatory. Oteri did not request me to do business with him alone, but I advised Oteri to do business on his own account and without Scalzo, Di Christina, or Randazzo, because I was of opinion that Oteri would be better alone in the fruit business.

Answer to 6th interrogatory. I found Mr. Oteri in my associations with him in Palermo, which were considerable, that he was a perfect gentleman, impressing me with the belief that he was honorable in all things, and would so act. He was a man of good heart and principles.

(Signed) G. C. HIRZEL.

Sworn to and subscribed before me this 12th day of October, 1886, at the consulate of the United States in Palermo, Italy.

[SEAL.] (Signed) PHILIP CARROLL, *Consul.*

120 Cross-examination of G. C. Hirzel in the case of V. Scalzo and Joseph Oteri, now pending in the fifth judicial circuit court of the United States, Louisiana.

Answer to 1st question. John Conrad Hirzel is my full name; my age is 36 years. I reside in Palermo, Italy, and have for the last 16 years. I am a merchant by occupation.

Answer to 2nd question. I have no confidence in or with persons, as a rule, engaged in the fruit trade; hence I have little or no opportunity to hear stories or tales about any one, and maybe on this account, as well as on account of my being entirely engaged in my own affairs, I have heard nothing with reference to Scalzo, Di Christina, or Randazzo for or against them.

Answer to 3rd question. With Randazzo and Di Christina I could not be induced to do business, because I did not like them. I know nothing as to their reputation among other people, as I do not associate with the class to which they belong, my associates and position being of a much higher class.

Answer to 4th question. I never did business with the firm of Joseph Oteri & Co. nor with Joseph Oteri alone.

121 Answer to 5th question. I never saw any letter or letters from New Orleans as to the bad or good character or in any sense of Scalzo, Di Christina, or Randazzo, nor did I at any time tell Mr. Oteri that I had.

Answer to 6th question. I do not know Antonio Di Christina; I understand he is engaged in the green-fruit business.

(Signed) G. C. HIRZEL.

Sworn to and subscribed before me this 12th day of October, 1886, at the consulate of the United States in Palermo, Italy.

[SEAL.] (Signed) PHILIP CARROLL, *Consul.*

122 CONSULATE OF THE UNITED STATES,
PALERMO, ITALY, *October 12th*, 1886.

I, Philip Carroll, consul of the United States at Palermo, Italy, do certify that I caused G. Di Christina, F. Filiberto, S. Gioe, and G.

C. Hirzel, witnesses hereinbefore named and examined, to appear before me at the time and place above named, and, after publicly and solemnly swearing each separately to tell the truth, the whole truth, and nothing but the truth in answer to the annexed direct and cross-interrogatories, I then and there proceeded to examine each seperately by propounding to him the said direct and cross interrogatories, reducing personally and in the presence, of the witness his answers thereto in writing with my own hand, and then caused each witness to sign his diposition in my presence, as already stated.

In testimony whereof I have hereto set my hand and seal of the consulate on this 12th day of October, 1886.

(Signed) PHILIP CARROLL,
[SEAL.] *Consulate of the United States, Palermo, Italy.*

Filed Dec. 28th, 1886.

123 Deposition of witnesses produced, sworn, and examined on the days hereinafter stated, at the consulate of the United States in Messina, Sicily, under and by virtue of the annexed commission issued out of the circuit court of the United States for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, to take depositions in a certain cause pending and at issue between Vincenzo Scalzo and Joseph Oteri.

LETTERIO TARRO, who, being duly sworn, on this 18th day of October, 1886, doth depose and say as follows:

First. To the first interrogatory he saith: I know Joseph Oteri and Vincenzo Scalzo. I first met Joseph Oteri on the 30th of August, 1884, in Messina, and a few days later I met V. Scalzo.

Second. To the second interrogatory he saith: Mr. Oteri proposed to me personally to represent his house in Messina in order to solicit consignments of fruit. There was only one consignment of fruit made to him through me. The fruit was sold and Mr. Oteri remitted the proceeds.

Third. To the third interrogatory he saith: I never at any time made any statement, either verbally or in writing, concern-
124 ing V. Scalzo, A. Di Cristina, or Ignazio Randazzo as to their business character, etc., to Joseph Oteri.

Fourth. To the fourth interrogatory he saith: I never made any such remarks concerning Mr. Randazzo's character.

Fifth. To the fifth interrogatory he saith: I was never requested by Joseph Oteri to do business with him alone and not with the firm of Jos. Oteri & Co. I received letters signed Joseph Oteri and others signed Joseph Oteri & Co., and I answered them in the same style.

I have nothing to add.

First. To the first cross-interrogatory he saith: Letterio Tarro; 54 years of age; soliciting agent; I live in Messina; have always lived there.

Second. To the second X interrogatory he saith: I never heard

anything from any one derogatory to the character of V. Scalzo, A. Di Cristina, or of Ignasio Randazzo.

Third. To the third X interrogatory he saith: I do not
125 know what is the reputation morally and as business men in Italy of said Vincenzo Scalzo, A. Di Cristina, and Ignasio Randazzo.

Fourth. To the fourth X interrogatory he saith: I have done business with the firm of Joseph Oteri & Co. The consignment above alluded to—I did not draw for this consignment either on Joseph Oteri or Joseph Oteri & Co.

Fifth. To the fifth X interrogatory he saith: I never saw a letter or letters from New Orleans containing information as to the bad character of Vincenzo Scalzo, A. Di Cristina, and Ignasio Randazzo.

Sixth. I do not know A. Di Cristina.

(Signed) LETTERIO TARRO.

Sworn to and subscribed before me this 18th day of October, 1886.

(Signed) WALLACE S. JONES,
U. S. Consul.

CHARLES SARRANNO, senior partner of the firm of Ferd. Baller & Co., who, being first sworn, on this 20th day of October, 1886, doth depose and say as follows:

126 First. I have had one short business call, separately, at the office of my firm from Mr. Joseph Oteri, of New Orleans, and a Mr. Scalzo, from St. Louis.

If I remember correctly this was in 1884. The other parties I do not know. I am surprised that I should be applied to in this matter, as I know nothing of the parties.

Second. I never had any business transactions with these parties in any way.

Third. No.

Fourth. No; I said nothing at all.

Fifth. In Mr. Oteri's letter of Oct. 7th, 1884, which was the first and last my firm had either from himself or his firm, he advised a dissolution of partnership, and that he would continue the business under his own name. In reply to above letter we stated we had no business to propose.

Sixth. I know nothing.

To the first cross-interrogatory: My name is Charles Saranno; my age, 40; my residence, Messina; my occupation, merchant; resided in Messina 20 years.

127 Second. I answer all these questions in the negative.

Third. I do not know Vincenzo Scalzo, A. Di Cristina, or Ignazio RanDazzo either personally or by reputation.

Fourth. My firm never did any business with Joseph Oteri & Co. or Joseph Oteri alone.

Fifth. I never saw any such letters nor had any conversation with Mr. Oteri concerning the same.

Sixth. I do not know Antonio Di Cristina.

(Signed) CHARLES SARANNO.

Sworn to and subscribed before me this 20th day of October, 1886.

(Signed) WALLACE S. JONES, *Consul.*

FRANCESCO COSTARELLI, partner of the firm of M. Costarelli & Sons, who being first duly sworn, on this 23rd day of October,
128 1886, doth depose and say as follows:

First. I know neither of the partners named.

Second. I never had any business transactions with any of the partners.

Third. Never made any statement whatever.

Fourth. I do not know the parties mentioned.

Fifth. I was never so requested.

Sixth. I know nothing on the subject.

To the first cross-interrogatory he saith:

My name is Francesco Costarelli; age, 64; Messina is my residence and the place of my birth; I am a merchant.

Second. I never heard anything about the character of the parties named.

Third. I do not know.

Fourth. I never did business with Joseph Oteri or with
129 Joseph Oteri & Co.

Fifth. I never saw any letter or letters from New Orleans concerning the character of parties named.

Sixth. I do now know A. Di Christina.

(Signed) FRANCESCO COSTARELLI.

Sworn to and subscribed before me this 23rd day of October, 1886.

(Signed) WALLACE S. JONES,
U. S. Consul.

PASQUALE SCALZO, who being first duly sworn, on this 23rd day of October, 1886, doth depose and say as follows:

First. I know Vincenzo Scalzo. A. Di Christina was once pointed out to me. I have never met Joseph Oteri or Ignassio Randazzo.

Second. In 1885 I had business transactions with Joseph Oteri & Co. I consigned lemons to the firm upon solicitation of Vin-
130 cenzo Scalzo, who was a member of the firm at that time. I bought up gardens and asked to have a credit opened at the Bank of Barcelona in my favor. I shipped about 4,000 boxes of lemons & oranges in several consignments on joint account, against which I drew part of the value. These transactions ended in a loss to me individually of 2,800 francs.

Third. I have never met Joseph Oteri, nor did I ever write to him concerning the character of V. Scalzo, Christina, or Ignassio Randazzo.

Fourth. I have never met Joseph Oteri or Hector Terni, consequently could make no statements to them.

Fifth. I can neither read or write, consequently my business is

conducted by my clerk. I do not recall that he was ever requested to correspond with Joseph Oteri alone or with Joseph Oteri & Co.

Sixth. I know nothing on the subject.

To the first cross-interrogatory. My name is Pasquale Scalzo; age, 44; residence, Barcelona; merchant for 15 years.

Second. I have never heard anything derogatory to the
131 character of V. Scalzo, A. Di Christina, or Ignassio Randazzo.

Third. I know that V. Scalzo enjoys a good reputation; he is a property-holder in Milazzo.

Fourth. I have done business with Joseph Oteri & Co. I don't know that I ever did business with Joseph Oteri alone; consignments were made to the order of J. Oteri & Co. I never drew for the value of the shipments but received one-half of the value from Fazzio, the president of the Bank of Barcelona.

Fifth. I never saw any letters from New Orleans, etc., nor were any ever read to me.

Sixth. I saw him once at a distance.

(Signed) PASQUALE SCALZO. his x mark.

Sworn to and subscribed before me this 23rd day of October, 1886.

(Signed) WALLACE S. JONES,
U. S. Consul.

132 ANDREA FAZZIO SOTTILE, who being first duly sworn, on this the 25th day of October, 1886, doth depose and say as follows:

First. I do not know Joseph Oteri, A. Di Cristina or Ignazzio Randazzo. I do know Vincenzo Scalzo, whom I met in 1884 & 1885 at Barcelona.

Second. As president of the Bank of Barcelona I have had business first with Joseph Oteri & Co. Vincenzo Scalzo was a member of the above firm at that time, but when Joseph Oteri & Co. withdrew their credit from the bank Vincenzo Scalzo continued to do business with me individually. The business consisted in advances on fruit consignments. Our business relations began by V. Scalzo asking the bank to make advances on fruits shipped to Oteri & Co. V. Scalzo reimboursed the bank for all advances. When the account between the bank & Joseph Oteri & Co. was closed everything was all right.

Third. I never said or wrote anything to Joseph Oteri concerning the character, etc., of V. Scalzo, A. Di Cristina or Ignazzio Randazzo.

Fourth. I never said to Joseph Oteri or Hector Terni or either of them that A. Di Cristina was a "dude" or Ignassio Scalzo was an escaped convict or murdered. I never made remarks of this
133 character to any one; but I have always said that Vincenzo Scalzo was an upright, honest man.

Fifth. The Bank of Barcelona was requested by Joseph Oteri to do business with him individually, or not with Joseph Oteri & Co.

He gave no special reason for this request, but stated that in future he would do business individually with the bank.

Sixth. I have nothing to say, except that V. Scalzo always acted in a square way with the bank and with me personally in all our business transactions.

To the first cross-interrogatory. Andrea Fazzio Sottile; age, 35; residence, Barcelona, Sicily; president of the Bank of Barcelona; was born in Barcelona; since the founding of the bank.

Second. I have never heard anything from any one derogatory to the characters of Vincenzo Scalzo, A. Di Christina, or Ignassio Randazzo.

Third. The moral reputation and the reputation as a business man of Vincenzo Scalzo is good. I know nothing about the reputation of A. Di Christina or of Ignassio Randazzo.

134 Fourth. The bank did business with Joseph Oteri & Co., but never did business with Joseph Oteri alone. The shipments made for Scalzo's account were consigned to Joseph Oteri & Co. The bank drew on London bankers for these shipments. We never drew on Oteri & Co.

Fifth. I have never seen any letter or letters from New Orleans containing information as to the bad character of V. Scalzo, Ignassio Randazzo, or A. Di Christina.

Sixth. I do not know A. Di Christina, or anything about him.

(Signed) ANDREA FAZZIO SOTTILE,
Administor la della Banca Barcelonye.

Sworn to and subscribed before me this 25th day of October, 1886.

(Signed) WALLACE S. JONES,
U. S. Consul.

I, Wallace S. Jones, United States consul at Messina, Sicily, do certify that I caused Letterio Tarro, Charles Sardanno, senior partner in the firm of Ferd. Baller & Co.; Francesco Costarelli, partner in the firm of M. Costarelli & Sons; Pasquale Scalzo, and Andrea Fazzio Sottile, president of the Bank of Barcelona, witnesses

135 hereinbefore named & examined, to appear before me at the time and place above named, and after publicly and solemnly swearing each separately to tell the truth, the whole truth, and nothing but the truth in answer to the annexed direct and cross interrogatories and reducing in my presence and that of the witness his answers thereto in writing with my own hand, *and* then caused each witness to sign his deposition in my presence as already stated.

In testimony whereof I have hereunto set my hand and seal on this the 25th day of October, 1886.

(Signed) WALLACE S. JONES,
[SEAL.] *U. S. Consul.*

Filed 4th March, 1887.

136 *Letter of Credit "D & D 2" to G. Di Christina.*

Letter "D 1."

Lettera credito, 1,000 ℔℔.

NEW ORLEANS, 10 *Ottobre*, 1884.

Signor Gaetano Di Christina, Palermo:

Cotia presente pregoir prender nota che v'apersi me credito & lire sterline mille sopra Sign'r Lazard & Freres, y Londra.

Le votra tratte c qo gioni data devono esser accompaganata dalle polliza or carico att ordine, certificats consolare, polliza a securita, & non devono superare l'ammonoto in ragione di franchi quartto per agui cassa d'agrumie.

Senz attro per ora de il liacere di riverion ben.

Distmitamente.

JOSEPH OTERI.

137 *Translation of Letter of Credit D.*

Letter of credit for Lst 1,000.

NEW ORLEANS, *October 10th*, 1884.

Mr. Galetane Di Cristina, Palermo:

I beg you to take note by the present that I have opened you a letter of credit for one thousand pounds on Mess. Lazard Freres, of London.

Your draft at 90 days date will have to be accompanied by bills of lading to order, consular certificate, and policy of insurance, and must not exceed at the rate of four francs per box of green fruit.

Without else, & etc.

JOSEPH OTERI.

138 *Check "N."*

No. —. NEW ORLEANS, *July* 10, 1884.

The Louisiana National Bank of New Orleans,

Pay to the order of myself one hundred dollars.

$100.00. JOS. OTERI.

(Endorsed: Joseph Oteri.)

Check "O."

No. —. NEW ORLEANS, *July* 10, 1884.

The Louisiana National Bank of New Orleans,

Pay to the order of myself three hundred dollars.

$300.00. JOS. OTERI.

(Endorsed: Jos. Oteri.)

139 *Check "P."*

NEW ORLEANS, *July* 10, 1884.

The Louisiana National Bank of New Orleans,

Pay to the order of myself nine hundred & ninety-six $\frac{69}{100}$ dollars.
$996.69. JOSEPH OTERI, *Ag't.*

(Endorsed: Joseph Oteri, *Ag't.*)

Letter 8 Oct'r, 1884, to Laganay Pojiro, "L," copied at page 36 of this transcript.

U. S. Circuit Court.

VINCENZO SCALZO *et als.* } No. 11059.
vs.
JOSEPH OTERI.

Testimony taken from No. 11003.

Testimony taken by consent before Judge Wm. R. Whitaker, examiner on behalf of complainants, on Wednesday, Febru-
140 ary 24th, February 27th, and Wednesday, March 3rd, 1886.

Present: Mr. W. S. Benedict, for complainants; Mr. Joseph P. Hornor, for defendant.

Testimony of Mr. H. Terni, page 141.
" " Francisco Allessi, page 150.
" " B. Onorato, " 155.
" " Rocco di Crisitina Huber, page 160.
" " Francisco Morana, page 162.
" " Ignacio Randazzo, page 168.

Exhibit "A," page —.
" "B," "
Exhibit "C," "
" "D," "

Direct examination, page —.
Cross-examination, "
Redirect examination, "
Reported by D. O. Day, stenographer.

141 Mr. H. TERNI, being duly sworn as a witness on behalf of complainants, says:

By Mr. BENEDICT:

Q. What is your full name, Mr. Terni?
A. Hector Terni.
Q. Mr. Terni, what is your business or occupation?
A. I am a book-keeper for the New Orleans Fruit Importing Company.
Q. Were you ever engaged with Joseph Oteri & Co.?
A. Yes, sir.

Q. Can you state the time?

A. No, sir. I know that I left about the month of October or November. I don't remember exactly when I left.

Q. Of what year?

A. 1884.

Q. How long, about, had you been with them before you left?

A. From the begin-ing of the partnership.

Q. Did you go with any of the partners to Italy or Sicily?

A. Yes, sir.

Q. How many went?

A. Three besides myself—four altogether.

Q. By what road did you go?

A. New Orleans to St. Louis, St. Louis to New York, and from New York. Mr. Oteri and myself went to Liverpool, and then afterwards to Sicily.

Q. How did the others go?

142 A. From New York to Sicily direct.

Q. Now, who paid the expenses of each one to go to Sicily?

A. Well, Mr. Oteri has paid from New Orleans to New York. He bought two tickets for Mr. Scalzo and Mr. Di Christina.

Q. And he paid your expenses throughout?

A. Yes, sir.

Q. Do you know what it costs for those tickets to go from New York to Sicily?

A. Well, I can not say exactly. I suppose about $200.00.

Q. When you got to Sicily did you all meet there together or go to separate places?

A. Well, we went to separate places. Sometimes we would meet for a few hours.

Q. Who paid the expenses of each of you while in Sicily?

A. Mr. Oteri paid for me.

Q. You don't know as to the others?

A. No, sir; I know that he gave some money to Mr. Scalzo in Catania. I don't know for what it was. I think he gave the money in Catania for expenses. It was for merchandise.

Q. You remained with Mr. Oteri all the time while you were away?

A. Yes, sir.

Q. When did you and Mr. Oteri return to the city?

A. (Witness hesitated.)

Q. Well, then, how long had you been in the city before Mr. Scalzo and Di Christina came back?

143 A. Well, maybe one month or something like that.

Q. Were you present on any occasion in Sicily when Mr. Oteri made any contracts for fruit to be carried to New Orleans?

A. I was always with him.

Q. Can you recall any contracts that he made, from your memory, whilst you were with him?

A. Well he made some with Filiberto.

Q. For whom was that contract made?

A. Well, that with Filiberto was for the firm of Oteri & Co.

Q. Well, state some other contracts that was made, if any, for the firm by Mr. Oteri.

A. Well, I cannot tell you exactly.

Q. I am speaking of contracts where he was to make advances and to receive goods that they would ship to New Orleans to be sold on commission.

A. Well, I tell you when I was in some places in Liverpool with Mr. Oteri I told something to Mr. Oteri; on account of the bad reputation of some person we were compelled to tell some parties there that Mr. Oteri would conduct the business.

Q. Now, can you recall who the parties were with whom you say you told them that the business would be conducted by Joseph Oteri?

A. One clerk I remember. One was Salvador Gioe. I cannot tell you with how many persons we talked about business. We said that when we would get to New Orleans that maybe we would
144 dissolve the firm. We told some people that.

Q. Did you tell Filiberto anything of that kind?

A. Maybe; I cannot swear that I did.

Q. Well, who were the persons Mr. Oteri talked about whilst in Sicily? Who did he say had bad reputations?

A. Some one of the partners.

Q. You mean some one of his partners?

A. Yes, sir.

Q. Which one?

A. I don't know.

Q. What did he say to those parties who were going to ship goods to the firm?

A. Well, they said as long as it was Mr. Oteri they would ship them, but that if anybody else was in the firm they would object.

Q. That is what other people said?

A. Yes, sir.

Q. Therefore Joseph Oteri made the contracts for himself?

A. I don't know what you mean by contracts.

Q. Well, what was the kind of business you did with those people?

A. Well, they would make consignments.

Q. Did Mr. Oteri tell that to each one of the parties from whom he tried to get consignments?

A. Tell what?

Q. The fact that he would do business himself?

145 A. Certainly he did; he did it on my instigation.

Q. So that these men whom you were soliciting for consignments were told that Mr. Oteri would be the man alone?

A. Yes, sir.

Q. That he had no partners or that the firm would be dissolved?

A. That the firm would be dissolved as soon as he got to New Orleans. If possible to do it, he would dissolve it.

Q. Now, when you came to New Orleans had any fruit been shipped to the firm?

A. Oh, yes, sir.

Q. Do you remember the different ships that came with fruit for the firm before you left?

A. Well, before I left Filiberto Gioe and Di Christina.

Q. Now, in making these agreements for consignments how much was agreed to be advanced to them by Joseph Oteri? How many liras?

A. Well, I don't know exactly. It was all by credit. Some persons would give more credit and some less.

Q. Didn't some persons have conversations about the advances they would make on those different consignments?

A. I said Mr. Oteri was the manager of the business.

Q. Well, didn't they talk about it; that they would give five or ten dollars on a box of lemons?

A. I don't know, sir.

146 Q. Well, of your own knowledge of the business, what was the average amount they would advance on these consignments?

A. It depended upon the season. Some persons would pay more and some less.

Q. Who made the sales of the fruit that was consigned by the steamers before you left—what auctioneer?

A. B. Onorato.

Q. How were the sales made—for cash or for credit?

A. Oh, well, we sell for cash and for credit.

Q. Were any of the sales made on credit?

A. I don't know anything about it.

Q. Did you have charge of the books up to the time you left?

A. Yes, sir.

Q. Did you take care of the correspondence?

A. Yes, sir.

Q. Didn't each partner put in five thousand dollars?

A. Yes, sir.

Q. How much of that money had been used up to the time that the first vessel arrived?

A. I don't know.

Q. Did you make the entries in the books?

A. Yes, sir.

Q. And you made correct entries?

147 A. What I made were correct.

Q. Did you write any letters to Sicily for Mr. Joseph Oteri concerning Mr. Scalzo or Mr. Randazzo or Mr. Di Christina on the dissolution of the firm?

A. Yes, sir; I believe I did.

Q. Did you keep a copy of the letters which you wrote in your letter-press book?

A. Yes, sir.

Q. How much in the way of salary was agreed to be paid to you?

A. Sixty dollars a month and commissions on the profits.

Q. Were there any other clerks employed there whilst you were there?

A. No, sir; I was alone.

Q. So that outside of your expenses as book-keeper at sixty dollars per month you don't know of any other expense going on for the office at that time?

A. No, sir.

Q. You say that you were to get a commission?

A. In addition to my sixty dollars salary I was to get a commission on the profits. As there were no profits before I left, I received none.

Q. Do you know Mr. A. Di Christina, the young man who was a partner of Oteri?

A. Certainly.

Q. Do you know where he is now?

A. No, sir; it is a long time since I saw him.

148 Q. Do you know whether there was anything the matter with him—whether he was sick?

A. Well, I heard some one say there was something the matter with his brain.

Q. Who was it took your place as book-keeper after you left?

A. I believe Francisseo Allessi, now present.

Q. Do you know whether anybody else was afterwards employed after Mr. Allessi?

A. No, sir.

Q. Whilst you were book-keeper, and up to the time you left, was any money paid to any one of the partners by Mr. Oteri?

A. Yes, sir; Mr. Oteri has paid some to Mr. Scalzo for his own account.

Q. Do you remember how much it was?

A. Well, I suppose about one thousand dollars.

Q. Is it charged on the books?

A. Yes, sir; the books will show.

Q. Do you know anything about Mr. Oteri buying any figs at Messina whilst you were there?

A. Certainly.

Q. Did you have copies of the letters of credit kept at the office that were issued?

A. No, sir; the banks did not give any copies. We sent the originals there.

149 Q. Did you keep the papers and accounts in good order while you were book-keeper so that you could personally find without any trouble?

A. Yes, sir.

Q. Have you been in that line before in the importation of fruit?

A. Yes, sir.

Q. What kind of business is it, is it a money-making business or a losing business?

A. It is money-making business.

Q. Has that been your experience, making money with others?

A. Yes, sir.

Q. Do you know what kind of business Mr. Scalzo had been in before?

A. In St. Louis.

Q. Is he in the fruit business?
A. Yes, sir.
Q. And Mr. Randazzo also?
A. Yes, sir.

Cross-examination.

By Mr. HORNOR:

Q. You have spoken about some contracts that Oteri made in his individual name?
A. I did not say contracts.
Q. He solicited some consignments in his own individual name?
A. There was some objection.
150 Q. He did it in his own name on account of objections that had been made against his partner?
A. Yes, sir.
Q. Now, you say objections had been made to the bad character of some of his partners?
A. Yes, sir.
Q. By Joseph Oteri or by the other people?
A. By the other people.
Q. Did Joe Oteri make such objections?
A. No, sir; the other people did.
Q. Was Mr. Allessi employed by Mr. Oteri as a book-keeper after you left?
A. I don't know.
Q. About these figs bought at Messina, was that a private transaction of Mr. Oteri for his own benefit or for the benefit of the firm?
A. He did it like all the other kind of business. When we got back to New Orleans the firm was to be dissolved. It was agreed that we would dissolve the firm.
Q. Why was that promised?
A. On account of the objections on the other side.
Q. On account of that?
A. Yes, sir.

Mr. FRANCISCO ALLESSI, being duly sworn as a witness on behalf of complainant, deposes and says:

151 By Mr. BENEDICT:

Q. Are you a book-keeper by profession?
A. Naturally.
Q. When did you go into the employ of Joseph Oteri, and how long did you remain there?
A. Two days.
Q. By whom were you recommended for that business?
A. By Mr. Randazzo.
Q. Why did you not remain longer than two days?
A. Because when I went there it seemed the matters were not going on very well. There would not be much of a future for me

and I gave an excuse that the room was too cold and therefore I left.

Q. Did you make any entries in the books or write any letters while you were there?

A. I wrote some letters and some account sales.

Q. Did you keep a copy of the letters you wrote in the letter-press book?

A. Some of them.

Q. Was there a difficulty existing between the partners at that time?

A. Evidently for that reason Mr. Randazzo took me there, and I reported to him what I saw.

Q. What did you see to report to Mr. Randazzo?

A. What I saw I also reported to Mr. Oteri.

Q. What was it that *that* you reported to each of them?

152 A. I first reported to Mr. Oteri.

Q. What was it?

A. Out of delicacy for myself, and having been brought into that office, having observed that in the copy book there were two pages missing and following these two pages was attached the continuation of another letter I know nothing about.

Q. What did Mr. Oteri say when you reported to him that some of the pages of the letter book had been torn out?

A. Mr. Oteri answered that he did not know anything about it; that it was Mr. Terni who wrote the letter.

Q. What did Mr. Randazzo say when you reported it to him?

—. Mr. Oteri told me that he didn't know what was written, as it was Terni wrote that letter.

Q. What did you report to Mr. Randazzo, and what did he do?

A. Mr. Randazzo asked me what was the matter; I told him the truth, namely, that in the copy book there were two pages missing, and that there were also some letters which I did not like in the way they were written; there was one letter in which he said, "I have separated from my noble partner;" it is satirical.

Q. Did Mr. Randazzo go to see Mr. Oteri about looking at the books?

A. Yes, sir; some time after.

Q. Who was present when he went there?

A. I was present; Randazzo, Scalzo, Morana, who assisted Mr. Oteri, and himself; Mr. Morana was then book-keeper with Mr. Oteri, and A. Di Christina Huber.

153 Q. Well, all those gentlemen were present?

A. Yes, sir.

Q. What occur-ed then; what took place?

A. Randazzo said, "Give me the books."

Q. What did Oteri say?

A. He gave him the letter book and then took it away.

Q. Had they finished looking at it or were they looking at the pages?

A. Just as they were commencing.

Q. What did he do with the letter book then?

A. Mr. Oteri said he would give a receipt for as many pages as were contained in the book.

Q. Were they speaking about the missing pages?

A. We had not got there. I have already stated that Mr. Randazzo knew that the pages were missing.

Q. What did Mr. Oteri do with the book when he took it away from you?

A. He took the book and said, "If you want anything further just go to court."

Q. Did he lock it up in his safe, or did he carry it away?

A. He locked it up in his safe.

Q. How was the business carried on while you were there for those two days; was it carried on — the firm name or in the individual name of Joseph Oteri?

A. He signed as Joseph Oteri and Co., but in the letter book there were letters signed as Joe Oteri; I presume letters.

154 Q. Was anything paid to you by Mr. Oteri for your services?

A. I don't remember. I presume Mr. Randazzo gave me something. I was busy somewhere else, and just then went there to help.

Cross-examination.

By Mr. HORNOR:

Q. At the time they had this interview about this copy book, did Mr. Oteri want them to give him a receipt, or did they want to give them a receipt?

A. Mr. Oteri went so far as to take a piece of paper to write out a receipt therefor; how could he want us to give a receipt.

Q. Did he write that receipt?

A. No, sir; he did not. There was not time to write it.

Q. Why did Mr. Oteri want to give a receipt to Randazzo and Scalzo, when he had the book already in his hands?

A. In order to ascertain, I imagine, exactly how many pages there were in it, so that afterwards nobody could say any more pages were missing.

Continued for further testimony until Saturday, February 27th, 1886, at 3 p. m.

On this Saturday, February 27th, 1886, at 3 p. m., testimony was resumed, counsel for all the parties present, and, a number
155 of witnesses being on hand, the examination was resumed, and the proceedings were as follows:

Note.

In obedience to an order of court served upon the defendant on Friday, February 26th, 1886, he now produces all the books and documents called for.

Mr. B. ONORATO, being duly sworn as a witness on behalf of the complainants, says:

By Mr. BENEDICT:

Q. Mr. Onorato, you are a duly licensed auctioneer in this parish?
A. Yes, sir.
Q. Have you been for a number of years?
A. Yes, sir.
Q. Did you make the sales of the fruit that arrived in this port during the years 1884 and 1885?
A. I did, sir.
Q. Did you make the sales that are referred to in the five accompanying catalogues?
156 A. I sold all these cargoes.
Q. Do you remember for whom you made those sales?
A. I made them for sundry consignees.
Q. Were any of these in the name of Joseph Oteri or Joseph Oteri & Co.?
A. Joseph Oteri & Co.
Q. From whom did you receive your instructions to make the sales of the fruit consigned to Joseph Oteri & Co.?
A. From Mr. Joseph Oteri.
Q. Was there any occasion when there was any fruit consigned to Joseph Oteri or Joseph Oteri & Co. not sold at the time that other fruit on the same vessel was; and, if so, why?
A. I don't remember any having been sold at any other time except when the general cargo was sold.
Q. Was there any occasion when the cargo of fruit consigned to Joseph Oteri & Co. had not been sold?
A. I am not aware of any.
Q. Was there any occasion when Joseph Oteri declined to take part in the sale of the cargo consigned to himself or his firm, and have you received notice from Mess. Randazzo, Scalzo, and Di Christina to make a sale for account of whom it might concern?
A. Yes, sir.
Q. Please state the particulars of that occasion.
A. I don't remember the name of the steamer. There was one occasion on which Mr. Joseph Oteri declined to go into the
157 salesroom, and as the importer, who generally directs the sale, was not there, I then, knowing that the name was Joseph Oteri & Co., appealed to the other partners, who instructed me to sell for account of whom it would concern.
Q. Did you receive instructions from Joseph Oteri as to whether you should make the sales for cash or on time?
A. Mr. Oteri requested me to sell them for cash.
Q. Did you do so?
A. I did a greater part of the sales, except where I made arrangements to sell on time.
Q. Do you remember any occasion of that kind where he made arrangements to sell on time?
A. I remember one.

Q. What one?
A. Some fruits sold to Mr. John Zucca.
Q. Was that sale made at the request of Mr. Joseph Oteri?
A. I don't remember.
Q. Did you ever have any conversation with Mr. Joseph Oteri, and, if so, what, concerning a dissolution of the copartnership on his return from Europe?
A. No, sir.

158 Cross-examination:

By Mr. HORNOR:

Q. This sale that you made to Mr. John Zucca, in which you say that you delivered the goods to him without having received Mr. Joseph Oteri's order from him, that was after you had adjudicated this sale to Mr. Zucca?
A. Yes, sir.
Q. Did you have any orders from Mr. Oteri?
A. I had.
Q. But not to deliver the goods unless Mr. Zucca paid cash?
A. There was no question about that.
Q. Do you know what induced Mr. Joseph Oteri to let Mr. Zucca have that property without paying cash for it?
A. That I don't know. I don't know what were Mr. Oteri's private motives.
Q. Didn't you advise him to do it?
A. No, sir.
Q. Didn't you induce him to let Mr. Zucca have it?
A. No, sir.
Q. Didn't you recommend him to let Mr. Zucca have it on credit?
A. No, sir.
Q. Didn't you tell him that Mr. Zucca had good credit?
A. I did not. My impression is that Mr. Zucca purchased
159 goods from Mr. Joseph Oteri under promise that he was to have certain time within which to pay for them.
Q. How long is that time?
A. I don't know. After the goods had been purchased Mr. Oteri instructed me not to deliver them until he had learned from the bank whether they would discount Mr. Zucca's papers. Mr. Zucca was very much in a hurry to receive his fruit in order to ship it, but, as I had no orders from Oteri, of course I did not deliver it. Mr. Zucca had also purchased other fruit from other consignees and I delivered that fruit to him on my own responsibility, for which I paid. I then sought Mr. Oteri and found him in the office of William D. Clark & Co. Mr. Oteri was undecided how to act—whether to deliver the goods or not. Then Mr. Clark said he would sell Mr. Zucca all that he wanted and so did Mr. Del Horto. I then offered Mr. Oteri the money for the fruit less one per cent. discount for cash. Mr. Oteri refused and he telephoned to deliver the fruit to him. He telephoned to the fruit-shed to deliver the fruit to Mr. Zucca. That

was the only inducement that I offered Mr. Oteri, and I took that responsibility.

Q. You represented to Mr. Oteri that you trusted Mr. Zucca?

A. Mr. Zucca owed me at that time ten to fifteen thousand dollars.

Q. Was Mr. Zucca in good credit at that time?

A. Yes, sir.

Q. Then it pleased you to have Mr. Oteri give Mr. Zucca this credit?

160 A. I don't see how it could have pleased me. I simply told Mr. Oteri that I trusted him. I didn't ask Mr. Oteri to trust him, otherwise I would have paid for it.

Mr. Rocco di Christina Huber, being duly sworn on behalf of complainants, says:

By Mr. Benedict:

Q. Do you know Mr. Joseph Oteri, Mr. Randazzo, Mr. A. Di Christina, and Mr. Scalzo?

A. Yes, sir.

Q. Were you present in the office of Mr. Joseph Oteri one day when a number of gentlemen went there to look at the books of the firm of Joseph Oteri and Company?

A. Yes, sir.

Q. Tell us what occurred at that interview in your own language.

A. I happened to be there by chance, and as Mess. Randazzo, Scalzo, and Di Christina asked Mr. Oteri to prove his accounts to them, and Mr. Oteri took the book and showed it to them, and when the time came for them to examine the book, he said, "I will give you a memoranda of how many pages there are contained in the book."

Q. What then?

161 A. As Mr. Randazzo and the other gentlemen could not obtain what they wanted, Mr. Oteri said, "You can call me into court."

Q. Did Mr. Oteri let them keep the book, or did he take it away from them?

A. He took it away and put it in the safe.

Q. Had they gone through their examination of the book when he took it away?

A. No, sir.

Q. And he told them to go to court if they wanted anything further?

A. Yes, sir.

Cross-examination.

By Mr. Hornor:

Q. Did Joe Oteri ask those gentlemen to sign a memoranda for the book?

A. No, sir; what I understood was that Mr. Oteri would give them a receipt for as many pages as there were in the copy book.

Q. What did they want the receipt for?

A. They didn't ask for a receipt, they wanted an account.

Q. Didn't Mr. Oteri ask for a receipt?

A. No, sir; he wanted to give them a receipt for as many pages as there were in the letter book.

Q. What for?

162 A. I don't know.

Q. Did they refuse to take a receipt?

A. Certainly.

Q. Did Joe Oteri write a receipt?

A. He had commenced to write it. He didn't finish it.

Q. Did you read it?

A. I don't know how to read or write English.

Q. How do you know the receipt was in English?

A. Because I heard Mr. Oteri wanted to make a receipt.

Q. Was the conversation in English or Italian?

A. It was in Italian.

Q. How do you know the receipt was in English?

A. I don't know whether it was in English or Italian. All that I know is that Mr. Oteri started to write a receipt.

Q. Did Mr. Randazzo, Scalza, or Di Christina want to take a receipt from Mr. Oteri's office?

A. I don't know whether they did or not.

Mr. FRANCIS MORANA, being duly sworn as a witness on behalf of complainant, says:

By Mr. BENEDICT:

163 Q. Mr. Morana, what is your business?

A. I am a commission merchant.

NOTE.—Here Mr. Benedict and Mr. Hornor examined together the letter book produced by defendant and found pages 21 & 22 missing and the book full up to and including page 313.

Q. Were you at any time in the employment of Joseph Oteri & Co.; and, if so, when?

A. About the latter part of January, 1885, I was called by Mr. Oteri to make some Italian correspondence and some account sales.

Q. Did you write the letters that you wrote under the instructions of Mr. Joseph Oteri?

A. Yes, sir.

Q. Were they copied in the letter book?

A. Yes, sir.

Q. By you?

A. Yes, sir.

Q. Is that the letter book which you copied now before you?

A. Yes, sir.

Q. Were the letters signed by Mr. Joseph Oteri?

A. Yes, sir.

Q. How long did you continue so employed for that firm by him?

164 A. For eight days.

Q. By whom were you paid and how much?

A. By Mr. Joseph Oteri; I don't remember exactly how much. I think it was ten dollars he gave me.

Q. Were you present on any occasion when Mr. Scalzo, Mr. Randazzo, Mr. A. Di Cristina, and Mr. Joseph Oteri were present about the examination of the accounts of the firm?

A. Yes, sir.

Q. Please state what occurred then.

A. I was working there one morning when Mr. Scalzo, Mr. Randazzo, Mr. Di Christina Huber, and Mr. Joe Allessi came there and requested Mr. Joe Oteri to let them look at the copy book, and then Mr. Allessi commenced to look in the book (then I was working), and I heard Mr. Joe Oteri say, "Well, I will not allow you to look any more in that book. I will count the pages in that book and give you a receipt for them." Mr. Randazzo then stated, "I have nothing to do with that receipt; all I want to do is to look at the letter book to see if you have a right account of my interest as well as your own." To this Mr. Joe Oteri would not reply, and he took the book to put it in the safe, saying, "If you want the account you can call me into court."

Q. Will you look at page 23 and state in whose handwriting the page of the letter that is copied there appears.

165 Witness was shown the letter book.

A. No, sir; I couldn't say.

Q. Will you look at that signature on page 23?

Witness here looked at the signature referred to.

A. I am not very well acquainted with Mr. Joe Oteri's signature.

(Defendant admits that the signature on page 23 is his.)

Q. Will you now refer to that letter book and find from the index what letters were written on pages 21 & 22?

A. The index shows that the letter on page 22 was written to Lagana & Pojero.

The index does not show to whom the letter on page 21 was addressed.

Q. Do you know the handwriting of the letter on page 20?

A. I think it is Mr. A. Di Cristina's writing.

Q. Were there any other clerks in the employ of Mr. Joseph Oteri during the time that you were there?

A. There was nobody working with me. I don't know about outside.

Q. Do you know anything about a sale of any fruit while you were there that was consigned to the house of Mr. John Zucca?

A. No, sir; I do not.

Q. Did you make entries in the other books of the firm whilst you were there?

A. I could not say. I don't remember.

Q. You were helping to write letters and keep the account sales?

166 A. Yes, sir.

Q. Do you know who succeeded you?

A. I heard Mr. Terni was working for him.

Q. Before or after you?

A. Before and after me.

Q. Did you ask Mr. Oteri what became of those two pages of that book?

A. It was none of my business.

Cross-examination.

By Mr. HORNOR:

Q. Mr. Morana, what was this paper that Mr. Oteri wanted those gentlemen to sign when they came there to look at that book? You say that he wanted them to sign a receipt.

A. I said that Mr. Oteri wanted to give Mr. Randazzo, Mr. Scalzo, and Mr. Di Christina a receipt for the number of pages that were contained in the letter book.

Q. Didn't he, on the contrary, want them to sign a receipt for the number of pages that they received?

A. No, sir.

— Didn't he start to write a receipt?

A. I didn't see him.

Q. You didn't see him?

A. No, sir.

167 Q. Were you busy at that time?

A. I was writing at that time.

Q. When did that take place?

A. I could not tell you.

Q. About when?

A. While I was working there; about the latter part of January, 1885.

Redirect examination.

By Mr. BENEDICT:

Q. Can you tell in whose handwriting the blue letters at the top of page 20 of the letter book are?

Witness here looked at the letter book.

A. No, sir; I couldn't tell whose writing it is. The letter is written to Fiarandello.

Q. You knew Mr. A. Di Christina, who was a member of that firm?

A. Yes, sir.

Q. Was he in good health at the time you knew him?

A. He was always a little out of his mind.

Continued for further testimony until Wednesday, March 3rd, 1886, at 3 p. m.

168 On Wednesday, March 3rd, 1886, at 3 p. m., testimony was resumed.

Counsel for all parties present, and, witness being on hand, the examination was resumed, and the proceedings were as follows:

NOTE.—Mr. Hornor, of counsel for respondent, at the request of Mr. Benedict, of counsel for complainants, now produces the two missing pages missing from the letter book alluded to in the testimony taken heretofore in this cause, and said Mr. Hornor claims that the letter contained in these two pages is a private communication.

Mr. Benedict, of counsel for complainant, now offers in evidence the letter book referred to (marked Exhibit "B"), including the two pages just produced, viz., 21 and 22.

Mr. IGNACIO RANDAZZO, sworn on behalf of complainants, says:

By Mr. BENEDICT:

Q. Mr. Randazzo, did you pay up your share of the capital of five thousand dollars called for by the act of copartnership with yourself and others with Mr. Joseph Oteri?

A. Yes, sir.

Q. How long have you been engaged in the fruit business?

A. About fifteen years.

169 Q. Were you ever a commission merchant or importing merchant in the fruit business; if so, in what country?

A. I have received fruit on commission from Palermo, Catania, and Messina.

Q. Were you located in business at that time in this city or elsewhere?

A. I was in New Orleans.

Q. Were you the representative or agent of any special lines in the importing business of fruit?

A. In the year 1884 I received two steamships of fruit of the Societa Agrumara.

Q. How was your business and credit as a fruit importing merchant and commission merchant before you went into partnership with Joseph Oteri?

A. It was good. I received fruit on commission and also I advanced three liras a box in order to get the consignments.

Q. What was the state of your business affairs—that is, customers in Europe—at the time you entered into partnership with Mr. Joseph Oteri?

A. The same as it was before.

Q. What was your credit at that time and before?

A. It was good.

Q. Did you know or had you any information of anything being wrong with your name when you entered into business with Mr. Joseph Oteri?

A. No, sir.

170 Q. In connection with your entering into business with Mr. Joseph Oteri did any of the persons with whom you had been dealing before as customers consent to give their business with the new firm?

A. Certainly; because I sent circulars to all those who sent goods to me before that time to ship to the new firm.

Q. Did you go to Europe with Mr. Oteri and Mr. Scalzo?

A. No, sir.

Q. Do you remember when Mr. Joseph Oteri returned from his trip in the year 1884?

A. Perhaps about the end of September.

Q. What did Mr. Joseph Oteri say to you on his return from Europe concerning the firm and whether the firm should continue or not continue?

A. As soon as I knew he had returned I went to the office, and after the first greeting I asked him what he had done in Palermo. He didn't like the affairs, the parties at Palermo and Messina; said they had no money, and, according to him, it seemed a poor business and the parties over there seemed to take away our money. I answered him that all the time that I worked for my account I had never heard of such a thing as this, and afterwards I told him that by opening a credit of three liras a box we could never lose during the business season of the year, because they sent the fruit on commission. It was not us that shipped the fruit, but they did it; and with three liras a box there would always be something left over to us.

171 Q. Did Mr. Joseph Oteri say he had made a greater advance than three liras a box on any shipment?

A. He did not tell me whether he had advanced three, four, or five liras a box. He did not give me any information.

Q. Did Mr. Joseph Oteri at that interview say anything about dissolving the partnership?

A. No, sir; but he told me that if I did not pay the balance of twenty-five hundred dollars I would have to dissolve the firm. Our arrangement had been each to pay two thousand dollars on the departure of those gentlemen in order to defray the expenses and make advances as any merchant would think proper to ship here.

Q. At that time, when this conversation occurred, had any shipment been received or was there any need of money by the firm?

A. I don't know whether they needed money, but instead of paying two thousand dollars I paid twenty-five hundred dollars. This money would not be needed, because the fruit had not arrived yet.

Q. Did you pay up the other twenty-five hundred dollars that Mr. Oteri asked you for?

A. I have paid it. As soon as Mr. Scalzo arrived and as soon as he arrived we both paid in. Mr. Scalzo paid his and I paid mine.

Q. At any interview shortly after the first did Mr. Joseph Oteri say anything to induce you to dissolve the concern?

A. He did not tell me anything—only that Terni left. It
172 was in the month of November, and I went to the office, and Mr. Oteri said, "I have discharged Terni." I therefore said to Mr. Oteri, "Who will attend to the correspondence? If we do not answer the letters we receive we cannot do any business." Mr. Oteri then said to me, "Well, then, you had better look out after a book-keeper." I answered, "I know one just as good as Terni."

Q. Who was he?

A. Mr. Allessi.

Q. Did Mr. Allessi go to Mr. Oteri's office to take care of the books?

A. Yes, sir.

Q. How long did he stay there?

A. I don't know whether it was two or three days.

Q. Did Mr. Oteri about that time say anything to you to get you to dissolve the partnership?

A. No, sir; he did not. He gave me no satisfaction at all.

Q. Did you know at that time what Mr. Oteri had done in Palermo or in Europe?

A. He said he had gone there, and he had made some arrangements.

Q. Did you know what arrangements had been made by Mr. Oteri in Europe?

A. He told me only that he had made arrangements with Di Cristina, and that he had bought some figs from Di Cristina for his own account, as was seen by his mark being on the packages.

Q. Did Mr. Allessi report to you or to Mr. Scalzo anything that he found concerning the books or any irregularities in the books?

A. Mr. Allessi, after he worked there, told me that he did
173 not wish to work any longer there, because what he saw in the books was not good. He told me that two pages were missing in the letter-press book, and the business was done, as shown by the books, in the name of Joe Oteri.

Q. Did you go around to the office of Mr. Joseph Oteri to find out what it meant or to get information?

A. Certainly.

Q. Who was with you?

A. As soon as I heard what Mr. Allessi told me I went to Mr. Scalzo and reported it to him, that all the business was done in the name of Joe Oteri, and suspected something. I said to Mr. Scalzo: "You see how Mr. Oteri has ruined me, making me lose all my work." I also said to Mr. Scalzo: "Let us go to the office and look at the accounts and see how we are situated." We went to the office and found Mr. Oteri, and asked for the copy book. Mr. Oteri took the copy book and presented it to Mr. Allessi on the desk. I said to Mr. Allessi: "Examine the copy book." As soon as Mr. Allessi had commenced to turn the pages Mr. Oteri put his hand down on the book and said: "One moment. If you wish a receipt for as many pages as there are in the copy book I will give it to you." I answered him: "I don't wish a receipt. I want the accounts, as my interest is as much as yours." I wished to examine his

accounts to see whether he had sustained any loss or had made any profits. Mr. Oteri took the book and went off, saying: "If you wish the accounts you can go to court. I will give them to
174 you in the courts." I said to him: "You won't work; you won't give us any money; you better take a club and club us away."

Q. Do you know by whom the letters of credit were issued—in whose name — for the business in Europe?

A. In the name of Joe Oteri.

Q. By what bank?

A. He did the business. He did not let us know anything about it.

Q. Now, do you remember how the sales were directed to be made by Mr. Joseph Oteri or any of the consignments—whether for cash or for credit?

A. The first steamer was sold partly for cash and partly on time, but after we went into court we sold for cash.

Q. Who was the auctioneer making the sales?

A. Mr. Onorato. When Mr. Zucca bought Mr. Onorato called us and told us that Oteri's fruit must all be sold for cash.

Q. Now, what was the credit of Mr. Zucca at that time?

A. At that time I worked for my own account. He wanted credit from me. He bought four or five hundred dollars' worth of fruit, and I told him, "If the bank will discount your draft I will give you credit, and if *if* the bank will not discount your draft you will have to give me cash."

Q. What bank was it?

A. The People's bank. I went to the People's bank and presented this draft and brought an order to the bank, and Mr. Marinoni, the president, looked at the draft and said, "If you bring such a piece of paper here again I will not give you any more credit
175 in the bank;" and then I went to Mr. Zucca and made him give me cash.

Q. Was his credit better at the time that he bought this fruit from Joseph Oteri?

A. No, sir; Scalzo and my arrangements with Mr. Oteri were that whoever gave credit to Zucca would be the responsible person for it.

Q. Now, speaking of the expenses of the concern, did you ever draw any money from the concern after you put in your twenty-five hundred dollars?

A. No, sir.

Q. You never received a cent out of it?

A. No, sir; not a cent.

Q. Then any entry charging you with cash paid to you is incorrect?

A. I received no money from him after I paid my five thousand dollars. I did not get five cents.

Q. Do you know of any expenses of the firm outside of the expenses that were paid for the European trip and what may have been paid to the book-keeper?

A. All the expenses in the house were certainly the book-keeper's.

Q. Do you know of any other expense?

A. There was the expenses of the trip to Europe and the house expenses. I don't know of any other expense.

Q. Now, it appears from the account filed by Mr. Joseph Oteri that there is a balance that appears to be due by Mr. G. di
176 Cristina and Mr. S. Gioe. Do you know how that occurred?

A. I know that Mr. Oteri told me that he gave G. di Cristina two hundred pounds sterling, and that he opened a credit with Mr. Gioe of a thousand pounds sterling, part for half value of invoice and part for full value of invoice, and our arrangements were not to open this account of letter of credit. Mr. Oteri not being very familiar with this kind of business, I told him that if he gave money to parties out there to have it either secured by gardens (lemon groves) and to open the letter of credit at three liras a box; and he opened the letter of credit all just to the contrary, at his pleasure, as he pleased. I told him if he opened them at three francs a box there could be no loss in the business, and he opened them at four liras.

Q. Now, whilst you were engaged in business for yourself, were there profits, a gain, or a loss?

A. Certainly; if there were no profits I would not have worked.

Q. Do you know of any purchase of any dry figs while the firm was over there, or of figs coming here; and, if so, to whom?

A. I know that they were bought for account of Mr. Joe Oteri, because when he came back from Palermo he said he had arranged the thing.

Q. Do you know of any shipments of fruit that arrived here that was not sold on the day that other shipments to different consignors were sold; and, if so, why?

A. Yes; because Mr. Oteri was not present.

177 Q. What was the — he was not present?

A. How do I know? This was after I put him into court. Mr. Onorato asked Mr. Scalzo and I whether he could sell this fruit. I said, "I have nothing to do with this fruit, because it belongs to Mr. Oteri." On the next morning Mr. Oteri came and sold the fruit.

Q. Is there anything further that you would like to state in this matter in this time?

A. I found out by going into partnership I lost my business in a general way. I was agent for several steamships here. By what Mr. Oteri wrote in Palermo he made me lose that business.

Here witness produced a lot of letters.

Q. What are those letters you are producing?

A. They are letters from the president of the Agrumara Societa.

By Mr. BENEDICT: I offer those letters in evidence to show what line of business witness was in before entering into the partnership, marked "Exhibit A."

By Mr. HORNOR: I object to the introduction of those letters on the ground that they are not relevant to any of the issues presented

in this cause, and they are *res alios acta*, because defendant never had anything to do with them.

178 By Mr. BENEDICT:

Q. Do you know what this letter is that I now produce to you?
A. Certainly; it is a letter of credit opened to Mr. Di Cristina.

By Mr. BENEDICT: I offer the letter marked Exhibit "D" in evidence. I also offer in evidence statement of the catalogues referred to by Mr. Onorato, auctioneer, marked Exhibit "C."

Cross-examination.

By Mr. HORNOR:

Q. In how many installments did you pay your five thousand dollars of capital into this firm?
A. In two installments.
Q. Of twenty-five hundred dollars each?
A. Twenty five hundred dollars when Mr. Oteri went to Palermo and twenty-five hundred dollars when he returned.
Q. Did you give him that twenty-five hundred dollars before he went to Palermo?
A. Yes, sir.
Q. When did you give him the other twenty-five hundred dollars?
A. In the month of November; I don't remember when he returned.
179 Q. How did you pay the last installment?
A. In a check.
Q. Didn't you borrow the money from Mr. Joe Oteri to pay it with?
A. No, sir; the first twenty-five hundred dollars, I mortgaged property for it.
Q. Didn't you mortgage your property to Mr. Joe Oteri for it?
A. Yes, sir.
Q. And the second you paid?
A. Yes, sir.
Q. Didn't you authorize Mr. Joe Oteri to pay your brother-in-law, in Palermo, G. di Cristina, all the money that he (Di Cristina) wanted?
A. No, sir.
Q. Didn't you know that Mr. Joe Oteri advanced some money to G. Di Cristina in Palermo?
A. Certainly; he told me so himself.
Q. Didn't he do it for your account?
A. He didn't work for me.
Q. No; that is not my question. Didn't he advance this money to your brother-in-law on your account?
A. No, sir.
Q. Did you go to Palermo with Joe Oteri?
A. No, sir.
Q. Now, which one of your old customers shipped fruit to the new firm?

180 A. There were a good many. I don't remember how many. I don't know how to read or write. Business was conducted with him, he knowing what they were. Ponticelli was one, Di Cristina was another, but I don't remember them all.

Q. What Di Cristina?

A. G. Di Cristina.

Q. You don't remember them all?

A. There are so many. If I had a list I could remember them.

Q. Does G. Di Cristina owe you any money?

A. No, sir.

Q. Do you know how to read and write?

A. No, sir.

Q. Neither in Italian nor English?

A. No, sir; that is my misfortune; if I knew how to read and write they would not have swindled me in this way.

Q. Did Mr. Joseph Oteri advance any cash to anybody else in Europe besides G. Di Cristina?

A. I don't know anything about it. He said he had not arranged anything.

Filed 4th March, 1887.

181–507 *Defendant's Note of Evidence.*

U. S. Circuit Court.

SCALZO *et als.* *vs.* OTERI. } No. 11059.

1. The commercial books of the firm of Joseph Oteri & Co., including all the books produced in court.
2. The reformed sett of the commercial firm of Joseph Oteri & Co., made up and referred to by the witnesses Del Orto and Bein in their testimony.
3. The vouchers procured by the def't at the call of plantiff.
4. The five exhibits annexed to def't's answer.
5. Testimony of Luigi Del Orto & documents annexed.
6. Exhibits marked "O 1 & O 2."
7. Testimony of Joseph Oteri and documents annexed.
8. " Joseph Oteri (recalled), Hector Terni (recalled).
9. " Joseph Bein.
10. " Ben. Onorato (recalled).
11. " Joseph Oteri (recalled).
12. Transcript of record in State of Ohio *vs.* V. Scalzo.

(The last objected to as not rebuttal.)

Filed 5th March, 1887.

508 Contents of brown envelope not marked.

C. M. Soria, president & sup't. Jno. S. Rainey, vice-pres't. F. W. Rainey, sec'y & treas.

Stern's Fertilizer & Chemical Manuf'g Co., manufacturers of superphosphate, pure ground bone, animal ch——, chemicals.

NEW ORLEANS, *July 8th*, 1884.

Messrs. Jos. Oteri & Co., city.

GENTLEMEN: Yours 7th to hand, and your proposition to deliver us 100 tons Brit. seconds brimstone accepted; delivery to be made this year at the wharf of the L. & N. R. r'd, this city. Terms of sale as p. y'r letter.

Truly yours, JNO. S. RAINEY, *V. Pres't.*

509 Contents of envelope marked S. S. Bessie Morris.

Per S. S. "Britannic," Phelps Brothers & Co.

OLD CASTLE BUILDINGS, LIVERPOOL, 25 *September*, 1884.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIR: We duly received your cable from New York reading: "Cable, Naples, filled figs order," by which we understand that the order for figs, about which you spoke to us when here, has been executed. We have also received a letter from Mr. G. Catnogno about the business, and we have replied to him that we shall accept his draft within the amount of £128 against our receipt of the applicable shipping documents for 100 boxes figs, provided the shipment be made before the 8th proximo.

This in accordance with the instructions you left with us.

In due course we will forward the documents on to you; and meanwhile

We remain, dear sirs, faithfully yours,

PHELPS BR. & CO.

510 We will probably ship the 500 boxes lemons on joint account, having not yet. Messrs. Tagliana & Co. chartered a steamer for New Orleans.

Lemons have been bought at £10 pr. box, but such prices cannot stand. The reason has been for the scarcity of large fruit. Oranges not yet ripe. Only shipments consist in some boxes of the south coast of the island.

The "Sidonian" sailed on Saturday for New York with 4,000 boxes Messina & near 10,000 Palermo, and the S. S. "Germania" sailed direct from Messina for New York 3 days before with 14,000 boxes.

The S. S. "East Anglia" is expected to-day here for New York. She will leave here on Saturday for Messina to complete there. Brimstone is a little lower.

Without any else and waiting your news, we remain,

Dear sirs, very truly yours,

R. FILIBERTO & CO.

511 PALERMO, *9th October*, 1884.

R. Filiberto & Co., Palermo.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: We confirm our respects of the time when your telegram has reached us—Cylinder bookish notafia—and, in answer to ours two telegrams we had, yours * were late.

The "Jason" wanting dead weight, it is quite indespensable to give 300 tons salt; so you will please to make your utmost to sell them before the arrival of this boat; and we hope you will succeed in selling it without loss.

Yesterday we shipped 100 tons brimstone, 50 bags paper-shell almonds, and 25 bags soft shell. We remitted to Messrs. Glyn, Mills, Currie & Co., of London, all documents, and we drew on them for the sums rec'd—£646.5.

We will ship the shelled almonds in one day or two.

512 Lemons—it has been quite impossible to buy the 500 lbs. lemons, for this boat being here yet small and very high price have been asked for the fruit of the south coast of Sicily.

It is not prudent to pay the wanted price.

Mr. Scalzo sailed on the Archimede for New York on Monday evening. The "Archimede" took about ten thousand boxes.

The "Jason" will proceed to Augusta for shipping the 300 tons salt, then to Messina Milazzo, and come back here to take the passengers. She may be ready to sail on or about the 16th inst.

If we may have some lemons before her sailing we will ship them.

As soon as we shall have another steamer for New Orleans we will cable you immediately.

After a very dry weather we have had for two days large rain, which has been very good for the new fruit.

We hand you copy of bill of lading.

513 As soon as the Jason arrives please to see if there is to do some business in almonds in shell, and if you want have more please to cable.

We are waiting your letter, and we hope to do large and profitable business this season.

We remain, dear sirs, yours very truly,

R. FILIBERTO & CO.

PALERMO, *27th October*, 1884.

R. Filiberto & Co., Palermo.

Messrs. J. Oteri & Co., New Orleans.

DEAR SIRS: We confirm our respects of the 9th inst., since when none of your favors has reached us.

We beg hand you now bill of lading of 207 tons salt, p'r "S. S. Jason," which please to sell on arrival to the best of our interest.

514 We shipped on the said boat the 25 bags shelled almonds on your own account & we send documents to Messrs. Glyn, Mills, Cory & Co., of London, and we draw on them for the amount.

We have had not yet the promised credit, but we hope to get it soon.

The "Jason" had no more place for shipping some lemons.

We received your following telegrams. Levelling, gilisus.

Telegraph when steamer leaves. There is a very bad feeling.

We have not found in the code the word gilisus, and we are not sure if you intended say so.

The S. S. "Hexam" has been chartered by Mess. Phelps Brothers for New Orleans, but we do not know when she may be ready to sail.

She is discharging the coal, and when ready she must proceed to Messina and come back to Palermo.

515 PALERMO, 31 *October*, 1884.

R. Filiberto & Co., Palermo.

Messrs. Joseph Oteri, New Orleans.

DEAR SIR: We confirm our respects of the since when your valued favors of the 7 and 15 inst. have reached us—the first covering credits for £1,000 on Messrs. Lazard Freres.

We have also received your two telegrams to the last we answered "Jason Aschreiber," being the consignees of the Dutch company.

The Jason took a very small cargo here and some 3,500 boxes between Milazzo and Messina.

Phelps Bros. chartered the "Hexam" for your place and she will leave Palermo on or — the 10th next.

Mess. Ward & Holtzapt intend to despatch one of their boat- to New Orleans this month.

516 We will ship by the first boat the 500 bxs. lemons on joint account.

We have noted the dissolution of the firm of J'h Oteri & Co., and that you intend to conduct the business by yourselve. We want further explication on the matter.

Brimstone is rather lower, and when we shall be sure of having a steamer we will make you an offer by cable.

We hope you have had a good result for your almonds *ex* Jason.

After the "Sidonian" we have had no other steamers for the States. There is in port the S. S. Earl Anglia, for New York, and she will leave our place on Monday for Messina. She will take here about 10,000 boxes lemons; exchange on London, 25.

Lemons have been bought at £9 p'r box. Oranges are yet green and pale in color.

We remain, dear sir, yours very truly,

R. FILIBERTO & CO.

517 PALERMO, 21*st December*, 1884.

R. Filiberto & Co., Palermo.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: We confirm our respects of the 18 inst., and on the

19th, evening, we received a telegram from Messrs. Lazard Bros. & Co., of London, saying: "Avoni cancelé credits 1099 s. 1104 confirmis par notre lettre 5 Novembre."

We do not understand at all your doing so, and we telegraphed you the following:

Lazard cancelled credit cable; accept drafts 766 st'g according letter of credit.

We have now received your cablegram; credits cancelled; remittermo receve grafo.

We cannot understand this, and we cannot accept your doing.

518 We have agreed in the beginning of the season and when you were here to ship on Tagliovia's boats 500 lbs. lemons, extra selected, on joint account; advance to shippers under our own guaranty, one-half of the invoice, and when the fruit is packed in our store something more—always under our own guarantee.

We have had from Catania 2,135 boxes, and we advanced them of one-half of the consul's certified — £300 st'g

We shipped also 500 boxes mountain lemons on joint account and we drew for £178 6 5, total amount of invoice.

500 boxes oranges		
122 " "		71 6 8
38 " lemons		
111 boxes		Nothing.
1,000 boxes oranges		180
Then we have shipped	1,771	
Catania	2,135	
	3,906	
Boxes and have drawn against		£551 6 8

Which makes about £3½ box advance covered with insurance paid here.

519 We have drawn for the full cost of invoice of the 500 boxes lemons, and one-half being on your account, say £89 3 2 st'g.

We were authorized by you to draw one-half on our half, which makes 44 11 7; then what we have drawn on you, more than we agreed, £44 11 7, or selling the fruit at a low price, you are always safe and you have our own guarantee on all.

Besides that, having — asked by Di Christina and others if their credit was or not cancelled, they answered us no; that is all right.

We come now to ask you why you have cancelled our credits, leaving it to others? You are free of having no confidence in our house, as we may have not in yours, and this cannot offend ourselves or you, but is always better to say this before and not when operations have been done.

520 Of course we were not looking to do business with you, and we decide to accept after the visit of Mr. Joseph Oteri, and thinking that we may continue our business with New Or-

leans with a serious house, as Mr. Terni affirmed, we induced Mr. Tagliano & Co. to charter the Irthington, but we could not believe that you were changing so soon.

We come to tell you now that if we had not drawn and sending the documents before to your brothers it was nothing, because we have had letters from New Orleans of a very serious house, offering us their agency and proposing a joint account in the charter of steamers together to Mess. Tagliana & Co. Our answer was that we do not use to change our friends, and that we had an arrangement with you and we could not accept their kind offer.

Please let us know from whom you could have a consignment of 4,406 boxes in one steamer, and this consigned also to you.

521 The risk is not your- but our own, because if the net proceed- do not cover the advance we have to look for the money and not you.

Mess. Lazard Brothers & Co. have opened us the credits and they are answerable to accept our drafts drawn before their telegrams. For this reason we send to our banker in London their letter of credit. An honorable house as Mess. Lavard could not refuse to accept, and we have no doubt that they will do it.

In different case, we will give order to our London friends to pay the drafts, returning the shipping documents, & acting against Lazard Brothers & Co.

We have not yet received a word from you regarding the salt ex. "Jason," and we are anxious to hear about it.

We await your letters, and hope you shall be so kind to give us an explanation on the matter.

We hand you a copy of a letter received from your neighbors, & remain, dear sirs,

Very truly yours, R. FILIBERTO & CO.

522 (1.) PALERMO, 28*th August*, 1884.

Messrs. J'h Oteri & Co., Messina.

DEAR SIRS: We hope you are safely arrived and you have engaged good business in Messina.

The small box you left in the custom-house has been shipped on the S. S. Etna for Malta, to the care of the captain. We wrote to Mr. Zomick to send a person on board for receiving it.

The S. S. "Jason" is due here on about the 15th or 20th inst. We do not know yet in what way we would take our reimbursement for the ordered goods. Please give us an answer before leaving Messina.

We consigned to Mr. Scalzo the contracts. Please return one to us signed. Our best compliments to Mr. V. Scalzo & Mr. H. Terni, and wishing you a good and safe passage home,

We remain, dear sirs, very truly yours,

R. FILIBERTO & CO.

(2.) MALAGA, *30th August*, 1884.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: We confirm you our last respects of the 9th
523 inst. and continue deprived of your esteemed favors.

We have now to inform you that our campaign has opened, the following rates having been fixed for raisins, much to our regret, as we consider them too high.

London layers R's 38 }
Loose " 36 } first cost in store.
Layers " 32 }

What few lemons have been shipped cost $2.50 f. o. b. We look for an early decline on this fruit as equally in raisins when our market is well supplied. Entries of new fruits up to the present are nil.

We are dear sirs yours faithfully

CAMPUZANO BROS.
A.

(3.) MALAGA, 31 *July*, 1884.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: We have before us your esteemed favor of the 10th inst. covering your circular dated 1st inst., of which we take due note and wish you every prosperity.

524 We reply to your esteemed under receipt, addressing same, as you request, care of mutual friends, Mrssrs. Pasquate, Ajello & Co., Palermo.

You seem to ignore that we are one of the oldest and, perhaps, the largest shippers of Malaga produce to the United States, and should you intend to import same we certainly aspire to be favored with your orders.

We supply your neighbors, Messrs. Smith Brothers & Co., Messrs. Schmidt & Ziegler, and Messrs. A. M. & J. Solari.

We will have this pleasure again in a few days, with report of prospects of the incoming crops, and meanwhile remain, dear sirs,

Yours faithfully,

CAMPUZANO BROS.

We presume you have the Scattergood Fruiterer's Cable Code.

(4.) MALAGA, *9th August*, 1884.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: We confirm you our last respects of the 31st
525 ult'o since which we are deprived of your esteemed favors.

We beg now to report you the aspects of our incoming crops:

Raisins. The yield will be shorter than last season. The quality, as far as we can judge from the present appearance of the *wines*, will be good, but it is as yet too early to speak positively on this point. First shipments will not take place to any extent before the first half of September. We look for high opening prices for all grades.

Loose current. Quality of this fruit which we have heretofore branded "2 crowns black" will in future be "2 crowns blue." Please take note of this.

Almeria grapes. The yield will be exceptionally short and late especially in the district where the best keeping quality is produced.

Lemons. The crop will be larger than last year and of good quality but should not be shipped until the latter part of September. We look for low prices and hope not to be disappointed.

Jordan almonds. The yield will be considerably larger than last year's and prices should be comparatively low.

We will continue to advise you the prospects of our fruits and any variations that may take place in the aspect of any of the different fruits. Meanwhile, we remain, dear sirs,

Yours faithfully, CAMPUZANO BROS.

526 (5.) *Invoices.*

Invoice of 100 tons 1st quality Lercara brimestone to be shipped on the S. S. —— for New Orleans by order and for account of Messrs. Jh. Oteri & Co., of that place.

100 tons, at £5 5, c. f. i	£515
Less freight, 9	45
	£470

E. O. E.
Palermo, 20 August, 1884.

R. FILIBERTO & CO.

(6.)

Invoice of 25 bags shelled almonds to be shipped on the S. S. —— for New Orleans by order and for account of Mess. Jh. Oteri & Co., of that place.

25 bags, weighing ks. 2,500, at £5 15 p. bag ---------- £143 15

E. O. E.
Palermo, 20th August, 1884.

R. FILIBERTO & CO.

527 (7.)

Invoice of 50 bags paper-shell almonds to be shipped on the S. S. —— for New Orleans by order and for account of Messrs. Jh. Oteri & Co., of that place.

Jh. Oteri & Co. 50 bags, weighing kms. 2,500, at £2 7 p. bag -- £117 10

E. & O. E.
Palermo, 20 August, 1884.

(8.)

Invoice of 100 tons 1st quality Lercara brimestone to be shipped on the S. S. —— for New Orleans by order and for account of Messrs. Jh. Oteri & Co., of that place.

100 tons, at £5 3	£515
Less freight, 9	45
	£470

E. & O. E.
Palermo, 20 August, 1884.

528 (9.) MALAGA, 14*th August*, 1884.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: We have your circular of 1st ulto. and wish the new firm full success and prosperity. Our best services are at your commands.

We export chiefly raisins, Jordon almonds (No. 5) and lemons. Terms 3 % comm'n. Our brand is very well known all over the United States. We use Scattergood's code.

Jordon almonds will be far cheaper than last year. Guess $6½ will be very near the mark.

Lemons.—We quote shipment first fortnight Sept'ber, $2.35 fol.; second fortnight, $1.95 fol.

Raisins will open high—quality is sure to be good; quantity less than last year's by about 150,000 boxes.

In case of business confirmed banker's credits on London required, as usual.

Yours respectfully, FEDERICO VARDELA & CO.

(10.) (Translation.)

NAPOLI, *Aug.* 19*th*, '84.

529 I have received a letter from Mr. Hector Terni in which he asks to give you the price of figs, time of shipments, etc.

I hasten to accede to your desires and now will give you the prices and offer dried figs for £6 25 per box on board at Naples shipment in Sept. The price for garlic for immediate shipments is £21 per qui-tal on board at Naples. Please let me know what Mr. Terni intended to say by price via Liverpool while all my goods are f. o. b. Naples awaiting an answer.

Yours resp., G. CANTUOGNO.

P. S. White beans sound £24 50 per 100 k.
Bari peas including sacks 21 50 per 100 k.
Macaroni in long boxes 7 85 per box f. o. b. Naples.

(11–12.) (Translation.)

MESSINA, *July* 31*st*, 1884.

Messrs. Jos. Oteri & Co., N. O.

We had the pleasure of receiving your circular communicating the establishment of your commercial firm in your city.

Having worked with America for numerous years and especially with Mr. O. we well know what is necessary to satisfy the buyers who they all well know that the fruit shipped by our house are always of an excellent quality, having an equal on our market.

Our transactions with your port are very large, we may be disposed to give a part to your care if we find it convenient.

Naturally a great deal depends upon the informations that
530 you will give us on the movement and general prospects of your market which please give us regularly and with great exactness.

The crop of oranges and lemons leaves us in great hopes as regards to the quality while the quantity will not be very abundant. In view of the measures against cholera through which our island suffers particularly in an extraordinary manner all commercial movements have nearly ceased, therefore it is impossible to treat with proprietors on prices for their fruit. As soon as the conditions are bettered we will not fail to write you again; we are interested in exportations of sulphur, almonds and *phi*lbert- on which articles we give you the price current so you may act accordingly so you may see if they leave any margin. The quotations are so low on sulphur that it seems impossible that a shipment to America should not result very satisfactory.

Second qual unmixed 88 = : ton of 13
" " good 86 = : cant. f. o. b.
Third 83 = : including all charges and commissions.

Almonds The crop will be very abundant, the quality that is shipped to America cost to-day for Sept. delivery 57 per cwt. weight f. o. b. Messina including all charges but two per cent. commission extra.

*Phi*lberts There will also be a fine crop price 49 per 100 k. f. o. b, Messina including all charges and commission. Hoping that the correspondence between us will be to mutual advantage we are resp.

Yours MARIANO COSTARELLI & FIGLI.

531 (13.) *Invoice.*

N 829 boxes lemons "	£8	£6,632	
102 " oranges	6	612	
		£7,244	
Comm'n 3%		217	32
		£7,461	32

Milazzo 17 Aug., 1884.

GIUJEPPE ANETTA, *e C.*

Declaration to Invoice.

I, Giajeppe Anetta, of Milazzo, do solemnly and truly declare that I am the purchaser and shipper of the goods, wares, or merchandise in the invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the time when and the place where the goods, wares, and merchandise therein mentioned and which are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated or based upon the value of the square yard of any other specified quantity or parcel were purchased and the actual cost and quantity thereof and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that the cur-
532 rency in which said invoice is made out is the curreney which was actually paid or is to be paid for said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one.

I do further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of New Orleans, in the United States of America.

Dated at Milazzo, this 17th day of Dec., 1884.

GIUJEPPE ANETTA, *e Con'r.*

CONSULAR AGENCY OF THE
UNITED STATES OF AMERICA, MILAZZO.

Invoice Certificate of Verification.

I, Peter Lirejusa, consular agent of the United States at Milazzo, do hereby certify that at Milazzo, on this 17th day of December, anno Domini 1884, the within invoice, numbered 22, in which are mentioned and described certain products of the Island of Sicily, amounting, with the charges thereon, to the gross sum of seven thousand four hundred sixty-one liras and thirty-two cents, was produced to me by Giuj. Anetta in person, purchaser of the goods, wares, and merchandise therein mentioned, who thereupon declared in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of New Orleans, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the actual market values or wholesale
533 price of the goods, wares, and merchandise described in the said invoice in the principal markets of the country and at the time of exportation are correct and true or as set forth in the column of consular correction of estimates.

Witness my hand and seal of office, at Milazzo, the day and year aforesaid.

P. LIREGUSA,

[SEAL.] *Consular Agent of the United States of America.*

R'd fee, dollars 2.50, or liras 17.95, currency.

N. 22. Treasury fee.

CONSULAR AGENCY OF THE UNITED STATES AT MILAZZO.

N. 22.

Invoiced by Giuj. Anetta; consigned to Joseph Oteri & Co. 17th day of December, 1884; vessel, Edgar; master, ——, for New Orleans.

(14.) Translation.

PALERMO, *Nov. 18th*, 1884.

With your favor of the 10th ult. I have received your letter of credit for £200 on Messrs. Lazard Freres & Co., of London,
534 and have taken good note of its contents. Before entering into active business relations and to prevent mistakes I desire to know what commissions would be allowed me; it is necessary to inform you that I will not assume any responsibility for the eventual decay of the fruit; but I can assure you before allowing any advances I would have the fruit inspected without considering the private opinion of the individual asking for the advance although I am well aware that on the principal markets of America you have correspondents to whom, if necessary, you could consign the shipment of the gardener to whom you gave advances. Let me know if you accept such conditions. Awaiting your favors and an answer I am yours resp.

FRANCESCO FARDELLA.

(15–16.) (Translation.)

CATANIA, *Aug. 30th*, 1884.

Messrs. Joseph Oteri & Co., New Orleans.

In due time I have received your circular, July 1, and I am much obliged for the honor accorded me in notifying me of your firm that I am not a speculator nor a shipper of boxed fruit, but an agent representing foreign and domestic houses in various articles and also in boxed fruit.

I can do a great deal for your house if you accept me in
535 such capacity, and I can give you all necessary proofs by referring you to other foreign houses that I have represented; but it is necessary, dear sirs, to allow advances on each box as practiced by other houses of your market by opening a credit on London.

I can assure you that I can give you a good trade which will deserve all your attention. I know how to scrupulously guard your interest as I have done for other houses represented by me. Before shipping the fruit it is my habit to visit the stores of shippers and inspect it and class first on second and then on surrender of bill of lading I will allow so much advance according to quality as ordered by you, the small commission due to the banker here will be paid by the shippers and not by you. If you confide therefore in me all the above you will please inform me your precise conditions. The

house that I represent in Hamburg Germany in fruits allows me 2 % on the gross proceeds and on this I can give you proof any time you want by inclosing letters or otherwise. This is the best system to mutual interest. Assured of a prompt answer on which I may base my future action I remain

Yours respectfully, ENRICO CHIOSSONE.

(17.) NEW ORLEANS, 10 *July*, 1884.

Messrs. Campuzano Bros., Malaga.

DEAR SIRS: We beg to trespass upon your good pleasure
536 to furnish us with such information as you may possess respecting the commercial standing and responsibility of Messrs. Garret & Co. of Malaga.

We shall bear the courtesy in remembrance and trust to the future for an opportunity to reciprocate.

We will be pleased to have your kind response addressed to us at Palermo, care Messrs. Pasquale Agello & Co.

We have the honor to remain your very obedient servants,

(Signed) JOSEPH OTERI & CO.

(18.) (Translation.)

CATANIA, *July* 1, '84.

Messrs. J. Oteri & Co., N. O.:

I owe the pleasure of your address to a mutual friend who handed me yesterday the circular concerning the new firm, and I am well acquainted for some time past on the duty of agencies and general exportations for ac. others, and precisely on articles of our market.

Please let me know by return mail if you are disposed to accept the offer of my services in said capacity. I truly, without exaggerating the limits of modesty, think myself capable of fulfilling
537 the duties of such delicate position, having been employed several years as an accountant in houses of same kind. I have in the meantime acquired the personal knowledge of the traf-ic and the acquaintance of the principal merchants who would give me hopes to large business to do which may result to mutual advantage. Zeal, activity and good morals are the aims I present for said mission. I am in hopes that you will decide to enter in business relation with our markets and in time you will be able to pray my doings. While awaiting a favorable answer on the subject, accept my most distinguish- respects.

(Signed) G. MUSUMECI PAPPALARDO.

(19.) (Translation.)

DENIA, *Aug.* 1, '84.

Messrs. J. Oteri & Co., N. O., La., at present Palermo.

DEAR SIRS: With much pleasure I received your favor 10th July last. Mr. Romany Cardona is very well and am please- to know you will pass through Denia and on the subject we will speak on what is to be done; endeavor to advise me one day before starting for

Palermo. The crop of lemons is not as large as last year's, but we expect a regular quantity.

(Signed) AUGUSTIN ARANDA.

538 (20.) MALAGA, 31*st July*, 1884.

Messrs. Joseph Oteri & Co. (of New Orleans), Palermo.

DEAR SIRS: We enclose you a copy of your firm's letter, received from New Orleans, as equally our reply to same.

Respecting your inquiry contained therein, we regret to have to say that we never give information to our competitors, and much less in instances wherein we can say nothing favorable.

We would, however, beg you to address the German consul here, who is in a position to give you full information of the firm you enquire about.

We write you the foregoing under usual reserve and rely on your equity in the use of same.

We reiterate you our best offer of services and remain

Dear sirs, yours obediently, CAMPUZANO BROS.

(21.) MALAGA, 31*st July*, 1884.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: We have before us your esteemed favor of the
539 10th inst., covering your circular dated 1st inst., of which we take due note and wish you every prosperity.

We reply to your esteemed under receipt addressing same, as you request care of mutual friends Messrs. Pasquate Agello & Co. Palermo.

You seem to ignore that we are one of the oldest and perhaps the largest shippers of Malaga produce to the United States and should you intend to import same we certainly aspire to be favored with your orders.

We supply your neighbors Messrs. Smith Bros. & Co., Messrs. Schmidt & Ziegler and Messrs. A. M. & J. Solari.

We will have this pleasure again in a few days, with report of prospects of the incoming crops and meanwhile remain,

Dear sirs, yours faithfully,

(Signed) CAMPUZANO BROS.

We presume you have the Scattergood Fruiterer's Cable Code?

(22.) (Translation.)

ST. STEFANA, *Aug.* 15, '84.

Hector Terni, Palermo.

I take the liberty to remind you of your promise to stop at Patti with your companion on your return from Palermo.

We may be able on such occasion combine some busi-
540 ness in fruit.

Yours resp. with kind regards to Mr. Oteri,

(Signed) SEBASTIANO GIARDINA.

(23.) (Translation.)

PALERMO, 21 *Sep.*, 1884.

J. Oteri & Co., N. O.

According to agreement for the shipments of fruit, I have visited many gardeners who were anxious as the season was advancing. I have received as yet no orders from you, although I know others have received letters of credit and have been advised by their bankers to the same effect. This shows to me a lack of trust. I advise you that there are two Francesa Fiaterlli one is for Diego, and myself for Carlo—the first at one time shipper of fruit and now in the service of Floria. This for your own judgment. To a good understanding few words are necessary. I add also if you desire information, would refer you to Senator Floria, Lanaga-Filiberto and all your correspondence. Believe well.

(Signed) FRANCESA FARDELLA,
For CARLO.

(24.) (Translation.)

PALERMO, *Sep.* 7, '84.

J. Oteri & Co., N. O.

541 The object of the present is to inform you that I met you at the office of Mr. Hirzel; and did not speak of business, but awaited to write. And inform you that I am no longer in the office of Hirzel, but started for my own a-c; at present everybody more or less are in bad condition and I alone could represent you in the exportation of Palermo. You will know that fruit, sumach, wines, sulphur, &c., are my specialty. You will know also that I am well acquainted with all fruiters who have a high esteem of me. In my hands no one would be left owing and to whomsoever I may give advances shall be solvent people. Should give me best of fruit. Do not ignore that I am one of the oldest in the trade. In fact for your own a-c should you want me to buy, would obtain the choicest quality and use best endeavor for good results. Lastly my morals are well known this should be sufficient precaution for good results in your business. Awaiting your hasty reply so that I may not lose other opportunities, I remain,

(Signed) VINCENZO ROMEA.

(25.) (Translation.)

MESSINA, 20 *Sep.*, 1884.

J. Oteri & Co., N. O.

It is under the auspices of these merchants, Messrs. Guiseppe Abarte and Figli, that I take the liberty to write you the
542 present. In order to obtain from you sirs, that aid which is necessary to those who give themselves to commercial tra-fics, as you well know Messina does not offer inducement to those who are in hope of a future in business: therefore, I thought of establishing myself in your place. I am at present clerking "accountant" with

Messrs. G. Aberti & Figli and I am the same party if you will remember, to whom in company with Mr. Aberti you spoke so well of your provinces a few hours before your departure. Speaking frankly to you I am not able to remain in your market at my own expenses until employment is found, therefore I appeal to your goodness and ask you if you could engage me as clerk in your house as soon as I arrive, or else recommend me to some other place. I am able to do anything except foreign correspondence. I hope that you will take to heart my interest and that you will favor me with an early answer. In the meantime I have the honor to be with great respect,

(Signed) GUISEPPE ANDRONACA.

(26.) (Translation.)

CATANIA, 11*th Sept.*, 1884.

V. Scalzo, Milazzo,

I have received a letter from Mr. Tarro informing me that you would write from there, but in vain I have been anxiously waiting, and hope that you will answer the present. I take this
543 occasion to request of you the following favor. Please write to Milazzo to our friend Frederico Tagliavia and after your business, participate (?) to him that you have established me as your agent in Catania. To which effect I have already opened an office and make known to him my acquaintances and ability and endeavor to obtain for me the agency of his house, which would be very advantageous. So I am sure that coming from you he will be the first one to speak to me on his agency, on our way to Palermo. I am anxiously waiting your answer.

(Signed) GUISEPPE CAVALLARO.

(27, 28.) PALERMO, 19*th September*, 1884.

Messrs. Joseph Oteri & Co. New Orleans,

DEAR SIRS:—We are in receipt of your telegram from L'pool—"Glyn Mills—also of your valued favors London 12 inst., advising us to have opened a credit in our favor for £790—with Messrs. Glyn Mills Currie & Co. which was confirmed by them.

Jasan On account of the quarantine this steamer has retarded, and she could not be here before the 15 October and we will ship all this boat your goods.

The weather is dry, and we have had no rain since your leaving our city, and oranges and lemons are yet green and small.
544 If we shall have suitable lemons for the Jasan, we will ship a lot.

Trapani salt—If there is something to do in this article please advise. The present price is of about 18- cfi. The Jason could take some 3-400 tons, and if you shall see a commission please cable. We may be in time for the Jason.

Oranges and lemons—No price yet, we are engaging in the interior the best looking and selling fruit, and we hope the new shall obtain the highest price at auction.

Messrs. Tagliavia & Co. have just received a telegram from the Dutch company, advising that the S. S. Jason will leave Amsterdam on the 25th, direct to Palermo—so we expect her to be here on the 7th or 8th of next month. Mr. Scalzo is yet in Milazzo.

Hoping your senior and Mr. Terni have had a good and safe passage home, please — them our best compliments.

We remain dear sirs, yours very truly,

R. FILIBERTO & CO.

(29.) (Translation.)

NAPLES, *Sep.* 17–'84.

J. Oteri & Co. N. O.

We are in possession of your favor 28 ult. and 12th inst. for which I have taken note to ship you 100 boxes figs at 6.20 per box F. O. D. Palermo via Liverpool and N. Y. which I will do as soon as
545 possible. As the cholera which infests us now has interrupted all communication new figs have not reached our mkt. yet, for the payment of said invoice. I note that I must draw on Phelps Bros. & Co. Liverpool at sight, remitting them all documents relating to shipment. Awaiting your further orders.

(Signed) G. CATUOGNO.

(30.) Translation.

NAPLES, 23 *Sept.*, 1884.

J. Oteri & Co. N. O.

I have received your favor 13th inst. mailed at Queenstown and confirm my last respects 17th inst. I have taken note that with said letter you suspend the shipment of 100 boxes figs by you ordered and until your telegraphic instructions from you, being well understood that the shipment shall be made via Liverpool and N. Y.

Yours respectfully,

(Signed) G. CATUOGNO.

(31.) Translation.

MESSINA, 18*th Sep.* 1884.

J. Oteri & Co., N. O.,

Your favor 12th inst. reached me in due time. I have
546 learnt with pleasure that you are well and ready to leave N. Y. In wishing you a pleasant voyage I beg to remind you, that on your safe arrival in N. Y. you should hasten to send me your instructions, as you had already promised to send them to me from London. As the season is advancing very fast and I do not know how to guide myself with my friends who have already promised to make shipments of fruit to your house. In the meantime please authorize me to effect marine ins. here with a clause that in case of loss payment should be made to your bankers in London as it is generally done here, with Messrs. Baring Bros. This condition is very important as the shippers desire to insure here with our large companies who exact a premium inferior to yours. Mr. V.

Scalzo will leave by first steamer direct for your port, not being able to leave before via Malta on a-c the 21 d-ys quarantine which passengers arriving made to undergo in that island. At present there are 3 steamers advertised to leave for your port one Floria and Rubattino line, one Anchor line and another of Mr. Pierce. The first one will leave here about Oct. 10, '84; always at your command, with esteem.

(Signed) LETTERIO TERRO.

(32.) (Translation.)

PALERMO, *Sept.* 15, '84.

J. Oteri & Co., N. O.:

I have taken good note of your telegram received yester-
547 day from Liverpool as follows: Agrumeto Palermo protect steamers Faglivia sent you credit one thousand Oteri. I am sorry that the amt letter of credit that you sent me for 1,000, is not for 4,000 as you propose yourself while here; as you well know the advantages will be all yours in opening a credit for larger amts., as should a favorable opportunity present itself, I could have with more facility obtain larger business. Neither from Messina or anywhere else have I received the balance of £400 that you promised to advance me on my shipments of fruit, nor have you made any mention of it in your telegram. On my part and through Messrs. Scalzo and A. Di Cristina I will send you the receipt for the full £400 leaving to you the care to remit me the £150 in full settlement, nothing else for the present to write you. Always at your commands and with esteem.

(Signed) GAETANO DI CHRISTINA.

(33.) Translation.

PALERMO, 22 *Sept.*, 1884.

J. Oteri & Co., N. O.:

Following my last of the 15th inst., I have received to-day your favor — 13th, the contents of which are well noted. I will prefer as much as you desire and as much as I can, the steamers of the Tagliavia line not neglecting at the same time, to keep with
548 indiscreet relation with the Agrumaria and this please note I will do to fulfill scrupulously only your orders and not according to my agreement, because I can assure first, that the Agrumaria enjoys this year more credit than the past, being enlarged and considering the fairness of his partners among whom Culotta & Mocco of your market the shippers have double reason to keep away from Tagliavia; second, that Phelps will continue with Cusimano to maintain their line of steamers! being aided by the many shippers of the latter. We will remain alone to maintain the Tagliavia line and alone it seems very difficult to succeed as I intend to work well and as much as possible and I would be very sorry if the opposition of the other lines should force us to make a hole in the water. At any rate I repeat these are my conditions of which

I don't insist and on my part I will do all that is possible according to your desire to aid the Tagliavia line and I will start to make a shipment on first steamer of said line, which is expected here towards beginning of next month. On this subject I give you notice that if I am not furnished with necessary means by that time I will ask for money by cable as you authorized me to do in above-mentioned letter. Accept my distinguished salutations also those of Mr. Antonio Di Cristina.

(Signed) GAETANO DI CRISTINA.

(34.) NEW ORLEANS.

Ireto,

549	Mawkish	condole	generally
	answered	very	festal
	belfry	selling	prostitute
	upwards	archduke	absolve
	conguro	figment	Malaga
	fishhook	proficient	firedamp
	profound	layers	profane.

The weather has been unfavorable, barrels Almeria grapes generally unsound. Very small quantities here good condition selling 20 upwards. How many shall we buy for your account. Telegraph your limits.

Our to-day's fol. quotations with a rising market are as follows. Malaga boxes loose Muscatels 7–6 boxes best London layers 8–6 layers 6–9.

(29–10–'86.)

(35.) (Translation.)

BARCELONA, *Oct.* 22, '84.

J. Oteri & Co., N. O., La.:

While your partner Mr. V. Scalzo was passing through here, we had the pleasure of treating on the manner to facilitate our exporters of fruit for your market; it was agreed that you will allow us
550 2% on the ac. sales, and we to assume the trust to give advances to all those exporters who may ship boxed fruit to you. According to said agreement we had the pleasure to-day to make the first advancement on B–L's to your order. Mr. P. Scalzo brother of your Vincento has presented us a B–L by the S. S. Jasen on which he shipped 434 boxes lemons.

573 " oranges

Total, 1007 "

As he through a mistake has sent you direct the B. L. he has given us a letter of authorization which we herewith enclose, authorizing you to remit to us the proceeds of the above said boxes. Besides P. Scalzo we will endeavor to obtain other shippers who have intentions this year to make large shipments. Keep us well posted on the movements of your market.

Respectfully,

(Signed) BANCA BARCELLONESE.

(36.) Translation.

BARCELONA, 22 *Oct.*, '84.

Mr. V. Scalzo, N. O.,

The present is to authorize you to send a–c sales and proceeds of the boxes shipped to you per S. S. Jasen to be sold on your market to the Banca Barcellonese who has advanced me money and B. L. at the same time you must remit the bank a sight check on London for the proceeds of said sales.

Yours respectfully,

(Signed) PASQUET SCALZO & CO.

551 (37.) Translation. Same as 36.

(38.) Translation.

MILAZZO, 16 *Oct.*, '84.

J. Oteri & Co., N. O.:

Enclosed you will find memo. of the No. of boxes shipped on board the S. S. Jason for your port, said fruit was shipped to your address according to agreement with Mr. Vincenzo Scalzo as soon as I will receive from Messina B–L's and consular certificate I will send them to you. Awaiting your further favors.

(Signed) P. SCALZO & CO.

(39.) Translation.

MILAZZO, *Oct.* 19, '84.

J. Oteri & Co., N. O., La.:

Enclosed please find B–L. and consular certificate for 1007 boxes lemons and oranges, shipped to your order on board the S. S. Josen.

Please acknowledge receipt of all documents. Awaiting
552 your further orders.

(Signed) PASQUAL SCALZO & CO.

(40, 41.) Translation.

PALERMO, *Oct.* 25, '84.

J. Oteri & Co., N. O.

Following my letter of yesterday I have received to-day your letter 7th inst. and contents noted. I have reason to believe the contrary in regards to the letter of credit, as your last telegram which reached me here on the 11th advised me then you had sent it. In regards to your Mr. J. Randazzo I have nothing to say as I really owe him $3700 dolls., while I am in credit of some 45000 fcs due me by the various shippers though the last very ruinous fruit season everybody indistinctly remained behind. I add only that in my present condition it would be indifferent to me whether I owed the said am't to you or Mr. Randazzo, as I expect during the new season to collect my outstanding a-cs and settle my indebtedness. I am sorry on the arrival of the Jasen you will remain surprised at not finding any box fruit to your consignment; the rea-

sons I have already given you yesterday; now I add that if I had chartered the vessel I could have shipped my goods, but unhappily I did not do it, therefore I as well as other shippers had our
553 boxes remain in store. In regards to business the season cannot be said as commenced. Buyers for the present are few and are short of funds, the production of fruit this year is inferior to last year's, but still we are in hopes of doing good business. I beg to remind you that before your departure from here, you promised to send from Massina, a letter authorizing me to represent you, which you failed to do. We beg you that therefore to send me said letter from there. The good rules of commerce demanded. Without further I remain

(Signed) GAETANO DI CRISTINA.

(42.) Translation.

PALERMO, *Oct.* 22, '84.

J. Oteri & Co., N. O.

Without any of your favors I refer to my last 13th inst. For the present only to tell you that the S. S. Josan left for your port without any shipments from me, the reason is that it took cargo at Messina and Milazzo coming to Palermo in such short time that in one day it was full loaded leaving in my store some 800 boxes lemons, several casks garlic and the boxes of paste and anchovies for your Mr. V. Scalzo. Awaiting always your favors,

(Signed) GAETANO DI CRISTINA.

554 (43.) Translation.

PALERMO, *Oct.* 7, '84.

J. Oteri & Co., N. O.

Following my last of the 1st inst. The scope of the present is to inform you that Messrs. A. Di Cristina & V. Scalzo have left yesterday evening on board the S. S. Archimede for N. Y. to return home. I have handed to be remitted to you to Mr. Scalzo the receipt for £746 16 0 money advanced me here by you on my shipment of fruit to your consignment. Said amt. I placed to you- credit in ac. current of which take notice; I have as yet received no answer whatever to my telegram of the 30th ult. in which I ask you £400 for the reason expressed in same and in strength of your letter 12th ult. In such manner it seems you give very little push to business and then keeping me deprived of money is not the manner to resolve our actions. In the meantime at the beginning of next week we will leave in this port the steamer Tagliavia & Co. for your port. Do you intend peradventure to make war with C—— & Phelps without "arms"? Awaiting your favors.

(Signed) GAETANO DI CRISTINA.

(44.) Translation.

PALERMO, *9th Oct.*, '84.

J. Oteri & Co., N. O.

I am as yet deprived of your favors and I now confirm mine
555 7th inst. The S. S. of Tagliavia & Co. is in port meanwhile I have received no answer to my telegram 30th ult. I cannot understand why, at my rate, to better make you understand the importance of the £400. I ask you I sent you another telegram to-day "IRETO" "N. O." "Candidate." Send 400—Tagliavia steamer in port.

Awaiting your further favors.

(Signed) GAETANO DI CRISTINA.

(45.) Translation.

PALERMO, *Oct.* 13, '84.

J. Oteri & Co., N. O.

Following mine of the 9th inst. I received day before yesterday the following telegram "Argrumeto" Palermo-Depravity "boorish ratasia" from which I understand you have given particulars by letter and having sent me a letter of credit for £1000 through mail. But I cannot understand what importance I should give to said telegram, which simply informs me of the sending of the letter of credit, this you could have saved as you had already advised me to that effect from Liverpool and also with your previous telegram from there. You should instead have answered to my request of £400 which I ask you to give advances to different shippers and to be able to make some shipments by first vessel the S. S. Tagliavia.

My request was based upon your letter from Liverpool which
556 you authorize me to ask for whatever money I thought the opportunity required. Your action displeases me very much although do not hurt me. I am sorry that you are so easy in promises but difficult to maintain them. If you think and desire to do business with me, you should never treat me in such manner. I have nothing further to add, as I have already written several times on the subject. Awaiting your favors.

(Signed) GAETANO DI CRISTINA.

(46.) Translation.

PALERMO, *Oct.* 1, '84.

J. Oteri & Co., N. O.:

In continuation of my last respects of the 22nd ult. I have yesterday addressed the following telegram to you—"Ireto, N. O. Expecting steamer Tagliavia send £400 Di Cristina"—I ask the said £400 by cable because I calculate the letter of credit would not reach me before the end of 10 days at which time the first steamer of your port is due, as I am informed by Messrs. Tagliavia & Co. moreover I am without funds as the money you left me I invested in purchases of fruit for my a-c to-day. I have received the following tele-

gram, "Agrumeto Palermo. Bouny—from which I under-
557 stand that by next mail you will send me a letter of credit. Messrs. V. Scalzo and A. Di Cristina have fixed their departure on the S. S. Archimede which leaves this port for N. Y. on the 4th inst. Awaiting your favors.

(Signed) GAETANO DI CRISTINA.

(47.) Translation.

PALERMO, *Oct.* 30, '84.

J. Oteri & Co. N. O.

I confirm my last letter 7th inst., and I am in possession of your favor same date, with letter of credit £500 on Messrs. Lazard Fres & Co., London, contents of which are well noted. Our market as it is usual on receipt of some good news from N. Y. advance in prices to such an extent as to leave no margin for any speculation, therefore for the present I leave my stores closed, and leave to others to gain the licks that will surely fall, when in future the exporters will be discouraged the owners will reduce the prices and in this way alone a few little shipments can be made. I don't think that our transaction should be limited to fruit alone but also in sulphurs, almonds, filbuts &c.—articles that I handle of which I made you a small shipment by Jason, having received firm orders from your market. If you will honor me with such orders, the tenor of your letter of credit
which limits me to ½ consular invoice would prevent me from
558 filling them, therefore you should send me another letter of credit on which I could draw the whole am't as you have done with Filiberto who shipped you 100 tons sulphur p'r Josan. You will inform Mr. Giovani Montelapre who will arrive on Jason, to remit to you the money by me advanced him 155 fcs. which you will place to my credit in a-c current.

Yours respectfully,

(Signed) G. C. HIRZEL, JR.

(48.) PALERMO, *7th Oct.*, 1884.

J. Oteri & Co., N. O.

From your telegram 31st inst. I must retain that you have safely arrived together with Hecter Terni of which I am very much pleased. Your telegram as follows "Good prospects lemons sent you credit 500 Oteri" of which I have taken good notice and I hope it will not be too restricted because otherwise it would interfere with business. These good prospects for lemons, what do they mean? Is it that the first shipments will obtain more than $2.50 *dolls.* If so with a reasonable price here, one can push himself. By next steamer Jason I will send you a small sack shumack fine quality such as I always ship to other cities of America you will have it tried by one of the most intelligent tanners of skins in order
to induce him to try it on larger scale and we by each vessel
559 shipped to him and others from 1500 to 2000 scks. and should opportunity *should* present itself we could charter a sailing vessel and load it with sulphur and shumack. I am now of the

opinion that the fruit business is very dangerous and it would be better for you to interest yourself in sulphurs, shumacks and other products not subject to decay. Trusting to receive your favors.

Yours respectfully, G. HIRZEL & CO.

(49.) Translation.

PALERMO, 23 *Oct.*, 1884.

J. Oteri & Co., N. O.

I confirm my letter of the 7th inst. and herewith I enclose letter Messrs. Vincenzo & Guiseppi Uccione addressed to the Fruit Importing Co. of N. O. which you will read and act according its contents. I enclose also the draft and the letter from Mr. Tua in which he remitted me said draft please return to me the letter. I hope that they will not find any more fault by saying we have remitted the a-c to Tua, the latter did not give me anything he called on me and without concluding anything he departed. The crop of fruit does not show itself very propitious and it appears to me that we will remain the whole winter without working, to begin in April or May.

Should you have any orders for sulphurs almonds &c. to
560 give me I will be grateful, assuring you my best zeal in its execution the net proceeds of the 2 two a-cs of Mr. Uccione, you will demand which amt. you will remit me with exchange on London to the order of Mr. Uccione. Awaiting the pleasure of reading your favors, I remain

(Signed) G. C. HIRZEL, JR.

(50.) MESSINA, 31 *Oct.*, 1884.

Mr. Jos. Oteri, New Orleans.

DEAR SIR: We have your favor of 7th inst. with enclosure for which we thank you, but at present have no business to propose.

We are dear sir,

Yours very truly, FARANDELLO.

(51.) Translation.

MESSINA, *Oct.* 28, '84.

J. Oteri, N. O.

I confirm my last 21st inst. Your favor 7th inst. is in my possession, with enclosed letter of credit £500 on Messrs. Lazard Fres. & Co., London, I will not fail to keep strictly within your
561 instructions and be assured that I will do all in my power to give you the least displeasure in business and I hope little later to begin. The said amt. $500 I have already passed to your credit in a-c current. I must thank you with all my heart for the trust you placed in me. We have no steamers for N. O. at present Messrs. Phelps Bros & Co. advises us of one for next month. With all esteem.

(Signed) LETTERIA TARRO.

(52.) Translation.

PATTI, *Oct.* 31, '84.

J. Oteri, N. O.

I read with pleasure your favor 6th ult. and I thank you heartily of the good opinion that you have of me. With the hope of securing with you some business transactions. I shipped a sample of dried figs, cherries, ches-nuts, walnuts, and filbuts, so that you may tell me the value of them on your market. In order to assume a large speculation I have written this same date to your agt. in Messina, Mr. Letteria Tarro, asking him to take charge of the shipments of samples. Please accept my distinguish salutations.

(Signed) SEBASTIANO GIARDINA.

562 (54.) LONDON, E. C., 28 *Oct.*, 1884.

Jos. Oteri, Esq., New Orleans.

DEAR SIR: Your esteemed favor 7 inst. to hand enclosing letter of credit £1000 for which we are obliged.

Owing to the constant rains in Spain, this fall, we have not yet seen on our market a single parcel of grapes of any quantity, that it would be safe to buy for shipment to N. Orleans. We are awaiting a few more arrivals just due. Shall probably telegraph you shortly how things stand and at same time add latest quotations of Muscatel raisins. These have been dear and we are just waiting fresh telegrams to see if we can get in now at less money.

Alenerix grapes are fetching any price from 9–191. But sound keeping fruit is wanted, would fetch easily 19c. 20 pr. barrel. Valruna raisins only ½ a crop and we are selling them freely to New York c. 251 fot for average

31 layers.

New dates are just in Persian. Hallawee holders asking 18 for 56 balls in layers but cannot find buyers and want offers.

Yours truly, JOHN S. TOWNSEND & CO.

(55.) LONDON, E. C., 30 *Oct.*, 1884.

Joseph Oteri, Esq., New Orleans.

563 DEAR SIR: We confirm our cable as p'r copy enclosed.

Of further arrivals Aleneria grapes we can only export as before. Bulk weak condition only here and there a small parcel that it would be at all safe to ship, and as in consequence of its scarcity many buyers are seeking sound fruit, it fetches 20– and may soon go higher.

Malaga raisins are also dear and have advanced some we lately purchased on ac. of our Canadian friends. We have given you the lowest prices at which the fruit can be secured. The same rains that injured grapes have done equal harm to raisins both Malaga and Valruna. The latter are barely half a crop, and are getting dearer daily. 25 fot dema is lowest for fair off-stalk fruit.

Yours truly, JOHN S. TOWNSEND & CO.

(56.) 14TH OCTOBER, 1884.

Messrs. Joseph Oteri & Co., New Orleans, La.

GENT'N: Referring to your letter to us dated the 12th ult. we now beg to hand you herewith bill of lading, policy of insurance, consular certificate and 3 invoices of goods shipped to New Orleans to your order pertaining to drafts of Messrs. R. Filiberto & Co. of Palermo upon us for £646 5. You will notice that the in-
564 voices amount to £641 5 only.

We also return 3 of the invoices which you left with us.

We remain ge't'n, your obed't servants,

GLYN, MILLS, CURRIE & CO.

(57.) 21ST OCTOBER, 1884.

Messrs. Joseph Oteri & Co., New Orleans, La.

GENT'N: Referring to your letter to us dated the 12th ulto. we now beg to hand you bill of lading, invoice, consular certificate and policy of insurance of goods shipped to your order by Messrs. R. Filiberto & Co. of Palermo, who have drawn upon us for £143 10 in respect of the same.

We also hand you the corresponding invoices which you left with us.

We remain, gent'n, your obedient servants,

GLYN, MILLS, CURRIE & CO.

(58.) 28TH OCTOBER, 1884.

Messrs. Joseph Oteri & Co., New Orleans, La.

GENT'N: Confirming our letters of the 14th and 21st inst.,
565 we now beg to hand yours at the instance of Messrs. R. Filiberto & Co. of Palermo, a corrected invoice of their shipment to you of goods value £470 in place of that for £465 which has been sent to you.

We remain, gent'n, your obedient servants,

GLYN, MILLS, CURRIE & CO.

(59–60.) Translation.

CATANIA, *Oct.* 31, '84.

J. Oteri, N. O., La.,

I have received your favor 11th inst. from the contents of which I well see that you desire to lose useless time. I know very well that most of your receiver of fruit have bad opinion of the shippers of this market and I am one of those that concur in doing wrong to those people that do not know how to manage their business. Our understanding is pure and simple if you want to take hold of nearly all this business of this market and Messina you must make advances on each box lemons and oranges. If you don't it is time lost. It is well understood for fruit usual in America. Lemons 300 size oranges 25 x 25 and mountain oranges 20 x 20. I can give you a banker here who would make the advances for your a-c against an open credit on London or France

as you may best desire, as practiced by A. Cusimano was at present here and with whom I shook hand a few days ago. I am here connected with all shippers of box fruit who shipped to the
566 different foreign houses I represent and if you desire to know my ability and knowledge of this business I refer you to the following gentlemen.

Antonio-Geraci in Constantinople
N. Kohuk " Hamburg
Boehmer & Son " London.

Moreover I can give you all the references you may desire but from the above 3—you can ascertain who I am, inasmuch you are in concern. I have nothing else to do, but to watch the quality of fruit and on this you can rest assured. I can furnish you recommendations from the best houses that I represent here and in Messina on various articles. Not to be too lengthy I tell you that if you desire to accept my advises and offers to honor me with a prompt answer, on the contrary do not disturb yourself with an answer for I can treat with other houses in your market.

Yours respectfully,
(Signed) ENRICO CHIOSSONE.

(61.) Translation.

MESSINA, *Oct.* 9, '84.

J. Oteri & Co., N. O.,

I confirm my last 18th Sep. and now answer your telegram 7th inst. interpreted as follows: Lemons are in good request, sent letter of credit £500 for which please accept my heartfelt thanks. I did not fail to inform my friends of the near departure of the
567 S. S. Jason for your port and of the good prospects for lemons in your market. As I told you personally my friends are few for the reason that most of the shippers find themselves in an unpleasant position. I have informed several that if they desire advances their fruit must be subject to inspection and if possible the repacking done at my store, and as many are contrary to my proposition they have taken another road and obtained advances which surely show a loss. The Jason will not do well on ac. of scarcity in lemons they being yet small and no importation from Calabria on ac. of the sanitary restriction now in vigor. I beg you to send me as soon as possible your conventional code not to ask from others the translation. Mr. Macheca was here for many days and as it seems he has combined a small Co. prescribed by Mr. G. Perrone which will die before being born notwithstanding that said society is not obliged to ship all its box fruit to Macheca but to act in such a manner as to ship only a certain quantity of goods which will obtain good prices. Mr. Cusimano arrived here day before yesterday and he is endeavoring to heal the sores of last year. Please hand the enclosed invoice to Mr. Terni and inform him that the tailor Mr. Toscono demands 5 fcs. more. Without further for the present.

Yours respectfully,
(Signed) LETTERIA TARRO.

(62.) Translation.

MESSINA, *Oct.* 21, '84.

J. Oteri & Co., N. O.,

568 I confirm my last respects and I am without any of your favors to answer. S. S. Jason left here for Milazzo on the 15th inst. w-ere it took aboard.

90 boxes from P. Calderone to order.
1,007 " " P. Scalzo & Co., order.
51 different p'k'g's, J. Tone.
It loaded in Messina
240 boxes & Bellantone to order Cusimano.
60 " Spardaro " "
122 " Marco d'Andrea to order.
39 " S. Lunza "
120 " Guitta "
150 " Sacca "
97 " G. Gianetta "
180 " G. Pasquale, Cusimano.
135 " D. Villerari, order.
9 kegs anchovis, Cusimano.
9 casks cheese, V. Scalzo, Santa Coponato.
2 small boxes, V. Scalzo.

I trust Mr. Cusimano will be able to realize good prices on fruit, otherwise we will have another cross to carry. On the boxes that were shipped at Milazzo Mr. Pierce asked me advances, which I allowed. On the departure of the steamer I hasten to ask the shippers for the B L's and remit *it* them to you, but Mr. Pierce answer thought best that the parties of Milazzo to send their box fruit to N. O. (to order). I hope that Messrs. P. Scalzo & Co. will ship their goods direct to you and not deprive me of my commission.

Yours resp.,
(Signed) LETTERIA TARRO.

569 Translation.

(63.)

MILAZZO, *Oct.* 16, '84.

V. Scalzo, St. Louis.

At 3 o'clock last night we finally finished loading the fruit on the S. S. Jason for N. O. To tell you the truth Mr. Talavia, for whom you have such high esteem in this circumstance did not show himself very condescending and in fact he threatened through his ag't Mr. Pierce to send the steamer off without taken the fruit. This action is not business and caused us an increase of labor and expenses that were not necessary. You should write to him on the subject, such inconvenience should not happen again ; by the 5th of next month another steamer will leave for your port and I hope to send a large number of boxes. Please on receipt of the present send me some money, as for the purchase of crops funds are necessary, the fruit I have shipped you I am sure will turn out perfect.

From the annexed mem'd you will ascertain the quantity of fruit shipped; said memorandum compiled by Bernard Salvia according your instructions; it was not necessary to send me a packer from Palermo as he demanded pay at $4.00 per day besides board and steamer charges. The boxes have been marked according to the value of said packer. Let me know if it is all right.

I have nothing else but to recommend to your good care of my son for whom I have a great deal of love, the only consolation his mother has is to know that he is in charge of good relatives.
570 Induce him to study and to maintain good conduct to preserve the dignity of the family. I enclose a letter of Mr Andrea Faccia.

Yours truly,
(Signed) PASQUAL SCALZO.

(64.) *Invoice.*

Invoice of 25 bags soft-shell almonds shipped on board the S. S. Jason for New Orleans by order and on account and risk of Messrs. Jh. Oteri & Co., of said place.

25 bags soft-shell almonds weighing 2,500 k's, at 47 — p. bag, £58 15

E. O. E.
Palermo, 8 October, 1884.

R. FILIBERTO & CO.

(65.) *Invoice.*

Invoice of 50 bags paper-shell almonds shipped on board the Dutch S. S. Jason for New Orleans by order — on account and risk of Messrs. Jh. Oteri & Co., of said place.

50 bags weighing k's 2,500, at 47 — p. bag ---------- £117 10

E. & O. E.
Palermo, 9th October, 1884.

S. E. O.
R. FILIBERTO & CO.

571 (66.) *Invoice.*

Invoice of 1,300 cantoes 1st-q'ty Lenora brimstone and shipped on board the Dutch S. S. Jason for New Orleans by order and on account and risk of Messrs. Jh. Oteri & Co., of said place.

1,300 cant's, equal to 100 tons, at £5 2 p. ton ---------- £510
Less freight, 9 — p. ton ---------- 45

£465

E. & O. E.
Palermo, 9th October, 1884.

R. FILIBERTO & CO.

(67.) *Invoice.*

Invoice of 25 bags shelled almonds shipped on board the S. S. Jason for New Orleans by order — for account and risk of Messrs. Jh. Oteri & Co., of said place.

A 1–25. 25 bags weighing k. 2,500, at £5 15 p. bag------ £143 15

E. & O. E.
Palermo, 12th October, 1884.

R. FILIBERTO & CO.

572 (68.) Translation.

PALERMO, *Oct.* 6, '84.

J. Oteri & Co., N. O.,

The present is to inform you that I leave to-day on board S. S. Archimede directly for N. Y. and then I will go to St. Louis and then your place. I could not leave sooner being obliged to remain in bed with swollen leg. I have been at Milazzo from where we will receive fruit by first vessel.

I am as yet swollen my belly like a balloon—many good shippers of fruit have promised to ship to us among whom G. Candella & Mini, Trusting the present will find you in good health, accept my compliments, also those of G. Di Cristini & Fili also to Mr. Terni.

Yours
(Signed) V. SCALZO.

(69.) CINCINNATI, *Oct.* 14*th*, 1884.

Joseph Oteri & Co., agents:

Yours of 7th inst. duly received.

Absence of writer has delayed answer until this time.

We have just received from N. Yk. 200 tons best 3d pd. Cost on N. Yk. $22.25 for 2240.

We do not need any more at present. We could not buy in N. Orleans unless price is as low as N. Yk. price.

Yours truly, E. GRASSELLI & CO.

573 (70 and 71.) PALERMO, 13*th November*, 1884.

Joseph Oteri, Esqr., New Orleans.

DEAR SIR: We beg to confirm our respects of the 31st ulto. since when your esteemed favor of the 18th has reached us, duly notice the contents. After the Jason we have had no steamers for your place—but to-morrow is expected here the Phelps boat for New Orleans.

We will ship on it the 500 boxes lemons on joint account, and we recommend you to observe before the sale the quality of the fruit because from 30 years we are in the fruit trade we have never seen such splendid lemons as we intend to ship during the season the same fruit, you must take all the interest for this new —, and you may assure the buyers that they will — always the same fruit.

Such fruit have really a difference on the best Palermo lemons of 50 cts. to 75 cts. p. box. Shipments till now have been moderate. After the — the only steamers sailed for the States are East Anglia — & Gattredo all for New York bringing all together about 40000 boxes.

There are now in port

The S. S. Haxam for Boston, Thomas Melville for Phila. the Ettritiadali for New York and the Coronalli is expected for New Orleans.

Oranges have been shipped in very moderate quantity.

574 Probably we will ship on the Coronalli a parcel of oranges.

Lemons have been bought at high prices. A. Cusimano sailed yesterday on the Gattredo for New York—he told us that the Messina market is exclusively in his hands—we do not know if there is anything of true.

Please to make our best regards to Mr. Scalzo and we are anxious to hear if the same is yet with you or not.

Waiting your news, we remain dear sir, yours very truly,

R. FILIBERTO & CO.

(72 and 73.)

PALERMO, 20*th November*, 1884.

Joseph Oteri Esqr., New Orleans,

DEAR SIR: Confirming our respects of the 15th inst. we are now in receipt of your valued favors of the 25, 30th ulto. noting the contents.

We have not answered to your telegram because we had not shipped on the Jason a single box—but only the good — by you, and you were sure to receive them.

Yesterday we received your telegram Doodle gross ton offer.

We understood this telegram regarding the sale Jason and
575 we answered immediately. Journeyman sell at best price obtainable.

The word lovable must be a telegraphic error being not in the code.

The Coronilla for your place sailed yesterday, having very small room it was not possible to ship our 500 B G and some 250 for account of our friends. We hope to be more fortunate by next boat.

Probably Messrs. Ward & Haozafel will charter a steamer for New Orleans soon, but we have not yet something of positive.

Phelps Bros. have not yet advised other boats.

Steamers in port for the States are Alexandra for Boston and the Independents for New York, both loading slowly. Price of fine lemons is from £9 to 9.50 p. box—Oranges 5½ to 6 according to the quality.

A. Cusimano sailed for New York on the S. S. Gattredo.

Exchange on London 90 days—25—If Tagliavia & Co. will have a steamer for New Orleans we will make an offer for 200 tons brimstone the price being cheaper.

We are like to know what you have arranged with Scalzo Di Ca.

Randazzo and if we may always consider Ge Di. Cristina as your agent here.

We remain dear sir. yours very truly,

R. FILIBERTO & CO.

576 (74.) Translation.

MESSINA, *Nov.* 21–84.

Mr. J. Oteri, N. O.,

Under the auspices of your agt. Letterrio Tarro I take the liberty to address the present enclosing B–L. and consular certificate for 128 boxes oranges 7 boxes lemons, which I shipped on board S. S. Corianalla On said arrival please sell to best advantage sending me remittance in check, by next steamer I expect to make another shipment.

Yours truly,

(Signed) GIO. BADALA,
Per FCO.

(76.) Translation.

MESSINA, *Nov.* 5–84.

Mr. J. Oteri, N. O.,

I confirm my last respects 7th inst. and I am without any of your favors to answer. The S. S. Corinalla left here on the 13th inst. for Palermo and N. O. On board there is to your consignment 135 boxes of fruit shipped by Gio. Vadala per Fco. for which please endeavor to obtain satisfactory proceeds. I have refused several lots of fruit because advances was asked on same after shipment and others because they demanded more than half the value. I have refused the small lot of lemons of G. Abate he asking $5.00
577 p'r box, Mr. Cusimano ag'ts having advanced as much to the majority of shippers the actions of Mr. C. this year is a mystery, I cannot understand why such high advances are made. We will hereafter very probably M. Costerelli & Fili will ship to your consignment by next steamer. Mr. P. Randalo will ship to others. F. Balleo & Co. keep closed. Mr. Sebastiano Giardina of Palli was not in time to ship the samples of dried fruit to your address, but will do so by next steamer.

With esteem I remain yours,

(Signed) LETTERRIO TARRO.

(77.) Translation.

PALERMO, *Nov.* 22–84.

Mr. Oteri, N. O.,

I confirm my last respects 18th inst. acknowledging receipt your favor 13th ult. Thank you very dear friend for the good opinion you have of me; I await with anxiety your photograph as a sign of friendship for which I am grateful a promise is a debt and must be kept. As soon as shipments will begin I will try to satisfy you and brand the boxes with a priest—monk—or any other beast. As

an emblem of good luck my kind regards to our friend Mr. Terni. With the hope of embracing you next year.

Yours friend

(Signed) FRANCESCO FARDELLA,
P'r CLLO.

578 (78.) Translation.

PALERMO, 13*th Nov.*, 1884.

Mr. Guiseppe Oteri, N. O.:

I am in possession of your favors 13th Sep., '84, 7 and 17th ult. The contents of which are well noted. The second enclosing 2 letters of credit £500 each £1000 on Messrs. Lazard Fres. & Co. London but I must remind you that our agreement was that I should draw for £1000 free and other drafts on documents. On receipt of the present, please telegraph instructions to your bankers to accept my drafts for £1000 free at the same time let them telegraph me their acceptance, in the meantime I will act with the above letters of credit. I add that this year it is my intention to ship whatever goods I have for your market to your consignment if our business relations continue mutually agreeable, this ought to show you if I am indebted to Mr. C. I have prepared my first shipment by S. S. Corianalla which is in port. Please keep me well posted on the movements of your market, and always give me your instructions to serve as guide as to my operations. As I am ready to do whatever you desire. Awaiting your further favors.

Yours respectfully,

(Signed) SALVATORI GIOE.

(79.) Translation.

PALERMO, 21 *Nov.*, 1884.

Mr. J. Oteri, N. O.:

579 In continuation of my last 13th inst., the present is to advise you that I have to-day drawn for £330 at 90 dys. date my own favor on Messrs. Lazard Fres & Co. London against consular invoice for £8,277.95 relative B–L for 1060 pkgs. fruit shipped per S. S. Corinalla to your consignment said documents will be forwarded to you by the said gentlemen in due form. Please endeavor to obtain an advantageous placement of this lot and protect to the best of your ability my interest, so as to induce me to more important shipments. Immediately effected a sale please communicate by cable the average price. Please note that I have no insurance as yet on this shipment should I desire to effect it I will keep you advised. Accept my best respects.

(Signed) SALVATORE GIOE.

(80.) Translation.

PALERMO, *Nov.* 24, '84.

J. Oteri & Co. N. O.:

Herewith please find B-L for 70 boxes and 23 cases lemons shipped on S. S. Corinalla and also consular certificate as follows :

D T L 35 boxes.
C G L 21 do.
P C L 14 do.
M G L 23 cases.

580 Please effect ins. on these boxes value $170 dol'd on arrival and as soon as sale is effected you will remit to your house in Palermo. My address is No. 16 Conte Ruzziero St. Borgo Nuavo.

With kind regards. ANTONINO PIPITONE.

(81, 82, and 83.) Translation.

PALERMO, 18*th Nov.*, '84.

J. Oteri & Co. N. O.

In due time I have received your letter 10th ult. enclosing letter of credit in my favor £1,000 through which I can draw on Mess. Lazard Fres. & Co. London at 90 days date of the rate of four Italian lires per box of fruit accompanied by the B-L to order consular certificate of ins. I have opened communication on the subject Lazard Fres & Co. London who will accept my dft. on such conditions. This morning I received the following cable Argrumeto Palermo copartnership affirmed. I understand by that all has again been arranged and that the firm of Jos. Oteri & Co. remains in vigor as heretofore established. Now permit me to tell you that you did wrong in sending letters of credit in the sole name of Jos. Oteri and also cancelling on your letter heads and envelopes the word Co. you did wrong not towards me but towards others as I must tell you meeting R Filiberto and S. Gioe speaking on the
581 subject could not understand or explain this oscillation which displeases me as much as you, these facts diminish the importance of a new commercial firm. You should instead have suspended sending the letters of credit to some shippers and await further results, on which renew your business in due form and with the same result. How will you arrange all this and what explanation you will give now? The S. S. Corinalla is now loading in this port, will surely leave to-morrow you will receive on board a few boxes to your consignment this is caused by the non-stability of your business to the present. On the quality of the fruit for the present we must be satisfied to have it medium as the only production is from Ficarazzi Co. but for next steamer the thing will change as the gathering of crops will begin in other countries, but

it seems to me I will not be able to ship you very good fruit, as several sales have been effected at moderate prices of which I could not take advantage being short of funds. Although I ask you for money for several times, you always promised and never fulfilled them. I shall be obliged to buy day by day and at market price. We are always on the only argument which I cannot understand how can we work without some funds at my disposals to good business. Before leaving here you promised to send me money from Messina which you did not do, then from Liverpool you wrote me that letter full of authority to ask you money whenever I thought proper, I did in fact ask but with the same result as the promises are never fulfilled. You will tell me that you sent me a letter of credit, but do you think that we can give impulse enough to such business with only a credit substantiated by B-Ls.?
582 This is good enough with shippers, who put themselves in direct communication with you, but with our agent it seems to me you should treat otherwise and should allow him other resources to facilitate your business. When you were here I explained to you clearly my intentions and I fail to understand therefore why you should be hostile to the regular sway of your strength. You sent me a letter of credit for £1,000 but do you know that this is nothing great for an agency as there are shippers who have the same for their excusive ac. I trust therefore that now that everything is arranged between you, you will allow me more margin to accomplish in the best manner my duty and that you will send me funds moreover it would be very advantageous for you to send me by cable £400 on receipt on the present. As I would be more encouraged to obtain good business for you. Awaiting your news and assured that I will obtain more confidence, I remain with friendship,

(Signed) GAETANO DI CRISTINA.

(84.) Translation.

PALERMO, *Nov.* 21, '84.

J. Oteri & Co., N. O.

Mem'a of marks and B-Ls for boxes shipped in my name to your consignment on S. S. Corianalla which left here on the 19th
583 inst. for your port.

First B-L 451 boxes

S	D	34 boxes belonging to Ciro D'Arpa			
Ext	Fini				
L	360	11	"	"	Girdamo Messina
G	M				
G	L	—			
		45			

2 B-L

149 boxes for Orazio D'Agati

3 B-L

441 boxes

GAETANO D. CRISTINA.

(85, 86, 87, 88, 89.) Translation.

PALERMO, *Nov.* 21, '84.

J. Oteri & Co., N. O.

Folliwing my favor 18th inst. I am without yours to acknowledge. The S. S. Corianalla left for your port on the 19th inst. on which I shipped to your consignment 635 boxes the 3 B-Ls consular certificate and ins. certificate will reach through Lazard Fres & Co. London on whom I have drawn through your letter of credit at 90 days date at the rate £4 per case total £25 40 at 24 95 equal £s 101 16 1 which amount I place to your credit in a-c current debiting you for £25 15 equal to £5 1 paid for ins. which you will divide in your a-c sales. Enclosed please find mem'a of shipment
584 and names of shippers their address you can find with your partners Randazzo and Di Cristina. I have learnt that with others you have not restricted the same limits as restricted to me in opening credit in fact I can draw £4 per box while some other have double letter of credit one to draw ½ the consular invoices for advances, and the other to draw for the whole amt. of ins.; if necessary this can be called an unlimited credit as the duty to-day is paid on measurement and not on value, the consular invoice therefore can be made for any amt. without fear or damages or control. Therefore to the shippers you give more margin than to your agt. Rest assured that in such a case, I will do very little for you. Give me as much as you give to others in limits of credit and I will assure you that I also can obtain a good number of boxes to your consignment. Gentlemen this is a queer way of acting and from you I did not expect it. How is it that you should treat better than me others who owe hundreds and thousands of fcs. to different consignees, while I owe only 18,000 fcs. to my brother-in-law only. As I said this is queer and I am very much surprised at Mr. J. Oteri on whose sincerity of character I never had any doubts and now I have reason to believe, that all these irregularities are flour in a sack. I am spotted. I told you as much when you honored me with your visit, therefore I speak openly. I detest underhand work. I always insist upon demanding why you should make such difference between I, having no heavy debts upon my shoulders and always walked with a high head honored by many connections and friends and enemies who have it as a habit to run in debt towards their
585 correspondence, so that they may keep friendly with the hopes of settling you by year. I know of one of your privilege characters who remained in debt this last season towards Franlin Rolf & Co. of Boston for 100,000 lires and I do not exaggerate the amt. as I obtained the information from a positive source. My style instead is to leave my property and if possible pay what I owe and not run short well yes! this is what I cannot understand, as I believe in your words and was sure of your promise, never could I believe otherwise. I have more right to protect your interest than others, as I am nearly immediately connected my son and brother-in-law being members of your firm while others and you cannot contradict it will look at their own interest only; it seems to me

that you make a mistake and treating me worse than others. I do not exact absolute control but I do not want to be left behind like a dog to whom a bone is thrown which is the same as to send me a limited letter of credit, in what manner do you want me to act as agt. with honor, when my mouth is closed and my feet tied; a shipper presents himself to me your agt. for example asks me before shipment for an advance on the boxes he is working and getting ready for you what can I tell him, not having the strength to do it. The shipper finding my mouth closed and my pockets empty, will go elsewhere and finds what he failed with me—business lost. I beg therefore your Mr. Jos. Oteri manager to be more reflected on general business and then also regarding me he in some manner by treating me inferior as in his treatment to the present, he believes me inferior to others, on this I will not linger as it may not be the intentions of Mr. Oteri but I insist in saying that I deserve
586 better treatment and I appeal to his loyalty.

Yours respectfully,

GAETANO DI CRISTINA.

(90.) *Invoice.*

PALERMO, 20*th November*, 1884.

Invoice of 635 boxes fruit shipped p. steamer Coronilla p. New Orleans and to be consigned to order:

No. 635 boxes lemons @ £4 ---------- £2,540
at 24 25 £101 16 1.

GAETANO DI CRISTINA.

(91.) Translation.

PALERMO, *Nov.* 7, '84.

J. Oteri, N. O.:

In confirming my last 28th Oct. I have received your favor 17th same mo. the contents of which are well noted. The person of whom you make mention, has it seems did not succeed, he left Messina several days ago and from information received it seems that the few friends he had did not remain satisfied of the liquidation of their a-cs. This shows a sure loss of ground. Do
587 not mind whatever he may say about you your respectability is well known all the tales that he may have spread to your detriment, benefit you, his new agents go right and left offering advances to everybody. I instead offer to share my commission with all commission merchants who may induce shipments to your house without advances. The advancing business this year is not like other years and on this subject permit me to tell you to be cautious, content yourself to smaller business with all the markets of Sicily, my language is that of a brother, be guarded on all sides. An association has been formed directed by Messers. G. Perone, G. Gatta, and N. Billantoni, the members will be some twenty, several are interested here with the Importing Fruit Co. presided by Mr. Macheca and do not want to change because Mr. Macheca paid all

the protested exchanges of the bankrupt bankers. The S. S. Corinalla for N. O. is in port and will leave here in a few days, many of my friends respectable shippers and proprietors were solvent and enjoy credit would facilitate me in trusting a part of their consignments, but to this effect it is necessary that I should have some facilitations accorded by Messrs. Phelps, to their agents here, 1st a letter of credit to draw in bank and allow advances to those principal proprietors who need advances before gathering and packing the fruit.

They would ship their boxes without further advances. 2nd another letter of credit to allow to all shippers who offer guarantee and solvency and social position not 1-2 of invoice cost, but 3-4 and also 4-5ths of the value always on device boxes and first marks. Later I can also make you offers for joint a-c
588 3-4s for your a-c and 1-4 for a-c shipper. It is necessary therefore to have a letter of credit for such operations I still repeat and assure you that through me you will always receive choice fruit and best brands.

Please send me Scatergood's code.

Yours resp.

(Signed) LETTERIO TARRO.

(92.) Translation.

MESSINA, *Nov.* 1–84.

Mr. Jos. Otçri, N. O.,

I am possessor of your favor 11th ult. the contents of which has been carefully noted. Neither would I hesitate to come to some beginning our business relations with private transactions whenever these would not come in conflict with the interest of Mr. Terro whom I know since a long time. I would limit therefore my work which I intended as agent to my own consignment and to those my most intimate friends consigning all to your house. The conditions should not change with those I had last year with C M Fish & Co. viz: A confirm credit on London in my favor to be used for advances by me guaranteed with my dfts at 3 mos date on B–Ls. My rebate com's of 2½% on the 5 that you are authorized to charge on the ac. sales said com's to be accounted for at the end of winter
589 season. If these are convenient to you. Please keep me advised by cable on receipt of the present announcing the opening of the credit and the banker of London so as to be in time for the 1st consignment by 2nd steamer which will leave here towards end of Nov. and reach your port by Christmas holidays. Time is money. Awaiting to hear from you.

Yours truly

(Signed) FRANCO TRACUZZI.

P. S. I use Scattergoods telegraph code.

(93.) Translation.

CATANIA, *Nov.* 1–84.

J. Oteri & Co., N. O.

M. J. Caruso who is interested in our house as manager of the fcty. of essences has given us your respectable address and informed us of the business you are in. As we are interested in fruits for own ac. and for ac. others, besides the exportation of the products of our factory, with the present we take the liberty to offer you our services in everything relating to fruit and other products. It is not necessary that we should tell you the system of our market, you being well posted in the business and your conditions by return mail this season having opened. Trusting that our proposition will be agreeable to you and that the connections will result to mutual benefit. Awaiting your favors we remain.

(Signed) BRUNO & MASSARELLI.

590 (94 and 95.) Translation.

J. Oteri, N. O.: MESSINA, *Nov.* 3–84.

We have received your esteemed favors 7th and 17th Oct. The first remitting us a letter of credit £500 on Mesrs. Lazard Fres & Co. London who have yesterday confirmed same. We will not forget the small order for figs; the same will be filled as soon as quarantine, which is now reduced to 10 days will be taken off entirely. We did not see as yet any advantage in shipping goods to N. O. on consignment, as we know that a large quantity of fruit is now on the way to your port, given us little hopes to obtain satisfactory prices. We thank you for your communications and also your advises referring to C We will use them if we think necessary. On a-c of the complete failure of rain the growth of fruit is very much retarded causing great difficulty in filling orders, as large fruit is very scarce, should we remain without rain much longer prices will augment surely and below £7.25 for lemons £6 for oranges the Nov. exportation will hardly be possible: on above prices our coms. of 3% is not included. We give you below quotations on other articles trusting that some transaction may result. Almonds and filbuts at present small demand prices therefore reduced, viz: 55–10 cwt F. O. B coms. extra on almonds 48–6—100 K–F. O. B. commission included on filbuts. The tendencies on our market on sulphur is continually calm and prices at present are so low that a small speculation would surely leave some profit. Catania asks following prices:

591 2nd unmixed 85–4:
2" good 84–6: pr ton F. O. B. Catania
3rd extra 82–2: all commissions and charges included.
Awaiting your answer proposing either operations.

Yours truly,

MARIANO COSTARELLI & FIGLI.

(96.) Translation.

CATANIA, 18–12–84.

J. Oteri & Co., N. O.

Through Mess. Tagliavia & Co. of Palermo, I shipped you 1430 boxes fruit as per mem'a the B-Ls and consular certificate you will receive through Tagliavia & Co. I received from said gentlemen an advance on this shipment of 4300 lires on arrival of the S. S. Irthington please retain for ac. said gentlemen the above amt. sending me the balance, effected the sale you will please telegraph me the average price of lemons and oranges as guide for future shipments. I hope that with this and future shipments you will use your best endeavors for my interest.

Respectfully,

(Signed) GILDO MANRO.

(97.) LONDON E. C. 7 *March*, 1885.

Mess. J. Oteri & Co., New Orleans,

592 DEAR SIRS: Without any of your favors to reply to, we beg to hand you our to-day's quotations for dry fruit in this market:

Currents f. o. t. all London 13–6, 14, in barrels.
Eleme raisins in case, 24, 25.
Sultanas in ba'lls, 16, 17.
Valencia raisins not safe to ship owing to condition.
Hallawee dates in cases, 16 c. & f. London, N. York.
Valencia oranges are unsound this year. We are very glad you did not touch them.

Yours truly, JNO. S. TOWNSEND & CO.

(98.) Translation.

CATANIA, *Nov.* 3, '84.

J. Oteri & Co., N. O.:

Your favor 15th ult. reached me on 31st and with pleasure I answer it. If you desire to enter in business relation with me, you should designate the articles most wanted on your market. I can offer you the firsts or 2nds brands, lemons, oranges, cottons, sulphurs and other goods you may require. In regards to advances that may be necessary for such operations a solid inference would be sufficient for my friends. I therefore await your news by return mail.

Very respectfully, G. MUSUMECI PAPPALARDO.

593 (99.) Translation.

N. Y., *Dec.* 1, –'84.

J. Oteri & Co., N. O.:

With much displeasure I announce to you the sad fate of our mutual friend D. Cuccia who in voyage lost his daughter. I cannot very well explain and tell you what a blow it was, such I am unable to describe. Through this cause Mr. D. Cuccia is not able

personally to attend to his business, so that the letter of the 18th ult. signed by A. Di Cristina and the other 25th signed by V. Scalzo and A. Di Cristina will probably lay over for some time, meanwhile answering the present give me the name of your firm and the name of the members of said firm, as we want to act in accord regarding the credit on London of which Mr. Di Cristina spoke presenting same to Mr. Cuccia as soon as he will be able to take charge of the office.

Believe me, yours truly,

D. CUCCIA,
Per L. PURPURA.

(100.) Translation.

N. Y., *Dec.* 8, -'84.

J. Oteri & Co. N. O.

Your favor 5th inst. to hand having been informed by my
594 clerk of your previous correspondence and having taken note of same. I would be very much pleased to conclude the business proposed. To such intent you should hasten a free credit on London for £1,000 and then I will put you in communication with my house in Palermo. Please answer if you can accept my above proposition. Believe me

Yours respectfully,

D. CUCCIA.

(101-102.) PALERMO, 18 *December*, 1884.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: Your valued favors of the 14 and 26th ult. and contents duly noted.

Messrs. Tagliavia & Co. have chartered the S. S. Irthington for New Orleans, which will leave here on Saturday.

Being the price of oranges cheap we cabled you.

Coward—will you take half interest on duster 2,000 bs oranges?

Pasigraphy $1.45.

Cheek cost freight insurance.

Arama immediate answer by cable.

We are waiting now your answer and we hope it will come favorable for helping our nephew in the chartering steamer for your place.

595 G. Gioe Exos got your credit—what is the reason that he ship the fruit on Phelps boats—Messrs. Tagliavia & Co. have yesterday cabled you on the matter for ordering him to ship on our boats.

We have shipped some fruit on the Irthington and we will give full particulars by our next.

Please on receipt of this letter to send us a new credit, because if you shall take ½ on the proposed 2,000 boxes, we fear to have no more credit for a next boat. We think that the bulk of fruit by this boat will come to your consignment.

We have a parcel from Catania and some from here.

In the case you shall see a good chance on oranges, lemons please

cable in order to be able to make some large business. Please to keep very strong the marks J. Oteri & Co. for lemons. We had on the "Rossend Castle" for New York 200 bs. of such lemons and we obtained $2.56 which was the highest price.

We have shipped on the Irthington the 500 boxes on joint account. Please let us know fully particulars on the quantity, packing, etc. of this mart.

All copies of document will be forwarded after the sailing of the steamer.

We remain gentlemen yours very truly,

R. FILIBERTO & CO.

(103.) Translation.

596 CATANIA, 21 *Dec.*, '84.

J. Oteri & Co., N. O.

Mr. Carinelo Mineo agent of Tagliavia has handed me your address. In order to open communication with your respectful house. I made a shipment of 200 boxes lemons per S. S. Irthington. Please dispose of same on arrival to best advantage. The quality of fruit is choice with your activity and knowledge of business I positive will result in a good sale. Encouraging me for future shipments and larger quantities. The B-L you will receive through the above-named gentleman, from whom I have received 650 lires which amt. please deduct from N proceeds.

Awaiting to read your favors, I remain,

(Signed) DOMENCIO SCALIA.

(104.) Translation.

MESSINA 13*th Dec.*, 1884.

J. Oteri & Co., N. O.,

I confirm my last 15th Nov. after which I rec'd your favors 14 and 21 same mo. the contents of which are well noted. Thanks for the catalogue of the S. S. Jasen. The S. S. Camelia left here on the 10th inst. for Palermo and N. O. This morning Mr. D. Villari offered me a lot of 1500 boxes lemons asking 5 lires per box being
1-2 consular inv. As at present the market value is 7 lires
597 at most I thought well to offer him 3½ lires which he refused; said Mr. Villera belongs to the asst. presided by G. Perone, altogether have shipped their boxes to Cusimano against an advance of 5 & 6 lires per box. To tell you frankly I cannot understand such offer. Something is wrong. I am sorry not to be able to transact some business, but as I already told you I desire to protect the interest of others and do not intend that through my negligence you should sacrifice your capital acquired through your work. Your favor of the 25th inst reached me on closing the present and will answer same later.

With kind regards, yours resp.,

LETTERIA TARRO.

(105.) Translation.

CATANIA, 26 *Dec.* 1884.

J. Oteri & Co., N. O.,

We have received your address through Mr. Tagliavia of Palermo and write the present to open correspondence. We have had the desire some time since to make consignments of fruit to your market, but the want of a trusted house, in your town has abolished this idea, but now as we have received your address through Mr. Tagliavia we make the first shipment to you of 300 boxes, viz: 200 lemons, 100 mountain oranges, which we shipped on the 14th inst. on the S. S. Irthington. Please dispose of some to best
598 advantage on arrival. The quality of the fruit is excellent being mountain fruit and in good condition. And we trust through your activity and endeavors will obtain a handsome price so as to encourage larger and future shipments. The B-L and consular inv. you will receive through Mr. Tagliavia who has advances on the said 300 boxes 975 lires which amt. please deduct from the proceeds the balance remit us with exchange on London. Soon after the sale telegraph results to Tagliavia who will make them known to us. We advise your having given your address to Mr. Giovanni. Fisichella one of our good shippers and we will endeavor to get others for you.

Awaiting your good news, we remain,

(Signed) MATTA, FAZZIO & RUIZ.

(106.) Translation.

MILAZZO, *Dec.* 19, '84.

J. Oteri & Co., N. O.

I answer although late your letter 15th ult. have been awaiting from day to day the arrival of some steamer as all my boxes were ready, yesterday the S. S. Edgar arrived on which I shipped 931 boxes lemons and oranges; yesterday we delivered the B-Ls and other documents to the Banca Barcelonese to be promptly remitted you on the same steamer, I have consigned to the care of the captain a box of clothes for my son. Please attend to its de-
599 livery through my brother. Next Monday I will ship other 500 boxes I would have done more had we not been short of steamers. Awaiting your writings,

Yours, PASQUAL SCALZO.

(107.) Translation.

PALERMO, *Dec.* 24, '84.

J. Oteri & Co., N. O.

I confirm my last 30th Oct. and acknowledge receipt of your favors 14 and 26th ult. in which you complain not having rec'd. any consignments of lemons from me. Really the season has been so far so encouraging to invest my own capital to a venture of which the sales would show large losses for the present I will do nothing and whenever you think proper next spring to give me

(115.) Translation.

BARCELONA, 22*nd Dec.* '84.

J. Oteri & Co., N. O.

We are in possession of your favor 25th ult. enclosing — for £200 for ac. of V. Scalzo which amt. will keep to his credit.

604 In regards as to the asst. formed between Mr. Scalzo, Catugno Accetta, and Scalzo you will allow us to give you frankly our opinion as we have already directly to Mr. V. Scalzo. When Mr. Scalzo was here personally it was understood between the members that each should contribute 1000 lires and give their co-operation to the good success of the enterprise. Mr. V. Scalzo on his part was to advance 5000 lires and not having said amt. we took his notes and credit his a-c in bank with 6000 lires. Mr. Scalzo has sent only now 5000 lires while his partners has worked some 10000 boxes and with what money with their own and some little help from us if few shipments have been made to America was caused by the scarcity of steamers touching at Milazzo. Mr. V. Scalzo has no reason to complain of his partners to whom we made known your desires and intentions and those of Mr. Scalzo they are ready to retain themselves free from any agreement with Mr. Scalzo. They do not intend to give security for the 5000 lires as they have agreed differently that is they have advanced each 1000 lires. As things stand now this bank cannot conclude anything decisive with you, but we are authorized to write you that this bank will accept your conditions stipulated in your letter Nov. 25–84 whenever Mr. Catugno, Ascetta and Scalzo present the guarantee for 5000 lires each. Please communicate the present to Mr. Scalzo and give us instructions what to do with the £200 and inform him that we have given advances to his partners according to his instructions, and we trust we will do good business. By next vessel will ship the 4 casks wine for a-c V. Scalzo.

Yours resp.

ANDREA FAZZIO SOLTI.

605 (116.) Translation.

PALERMO 16 *Dec.*, '84.

J. Oteri & Co., N. O.

I have the pleasure to enclose herewith B-L 74 boxes choice lemons shipped to you for my a-c on S. S. Camelia to be sold to best advantage. The consular certificate you will find included in the one of Gaetano Di Cristina who will surely keep you advised that chgs. and coms. should be the same as allowed E. Ponticelli: to tell you frankly I always been against of shipping to your market, being convinced that choice fruit as not examined according to its merits. To-day I have decided another trial and if the results are satisfactory I will make most of my consignments to your market. Ins. on my shipments are effected in Palermo, soon after the sale send me a-c sale and an ex. on some solvent bank of London to cover proceeds.

Yours resp. F. P. CALCUGNO.

(117.) Translation.

PALERMO, *Dec.* 16, '84.

J. Oteri & Co., N. O.

I enclose B-L 50 boxes fruit shipped by Mr. G. Anella to your consignment on S. S. Camelia for your port. Please dispose
606 of same on arrival to best advantage. Any recommendations are useless, as I am sure you will use your best endeavors to give our friend satisfaction. The a-c sales and net proceeds you will please address to him 422 Calata firni St.—The consular certificate will be sent you by your agt.

Yours resp. M. SAITTA.

(118.) Translation.

BARCELONA, *Dec.* 24-84.

J. Oteri & Co., N. O.

We confirm our last 19th inst. and now enclose consular inv. 251 boxes lemons shipped on S. S. Edgar. We also enclose duplicate B-Ls shipments 18 and 19th

Yours resp. BANCA BARCELONESE.

(119.) Translation.

BARCELONA, *Dec.* 19*th*-84.

J. Oteri & Co., N. O.,

We confirm our last of yesterday enclosing B-Ls for 931 boxes fruit S. S. Edgar we enclose now Bl-L 251 boxes lemons shipped on
607 S. S. Edgar on safe arrival please sell same at auction to best advantage.

Respectfully, BANCA BARCELONESE.

(120.) Translation.

BARCELONA, 18*th Dec.*-84.

J. Oteri & Co., N. O.

We confirm our letter of yesterday and now enclose B-L and consular invoice for 829 boxes lemons } S. S. Edgar.
102 " oranges }
which please dispose of on your market to best advantage. We place to your debit $24.55 being 2% of the sale 434 boxes ex.

Please inform us why you should charge 30 days interest, while you remitted us an exchange at 75 days date instead of at sight. Your telegram 22nd ult. announces the sale of lemons 3.80 while the a-c sale do not show any such price. We are awaiting your explanation to communicate same to our friends. Please provide us with an open credit to make advances. Awaiting your further favors.

BANCA BARCELONESE.

608 (121.) Translation.

BARCELONA *Dec* 17*th* 1885.

Jos. Oteri & Co.,

We confirm our last 15th, inst, and acknowledge receipt of your favor 28th Nov, enclosing a-c sales for 434 boxes lemons with a net proceed of $840.46 at $4.81 equal to £174–14–8 and an exchange for £174–14–8 at 75 days date on London to balance same.

We note that the lot of oranges has been withdrawn by Mr Vincenzo Scalzo, and we now await results. Messrs Lazard Freres & Co., London telegraphed us to day. We annul credit confirmed letter 5th inst. We await your explanations on the subject having already made engagement with several shippers.

Yours respectfully.

(Signed) BANCA BARCELLONESE.

(122.) Translation.

BARCELONA 15*th Dec* 1884.

J. Oteri & Co., New Orleans.

We have received this morning your letters 15, & 17th inst. Their arrival being retarded, having been sent to Barcelona Spain, hereafter please always add to your address, Italy. We took note that you have opened us a credit for £1000 on Lazard Freres
609 & Co., London, In conformity to your instructions we will rend to Messrs Lazard Freres & Co., all the documents concerning shipments, they to reimburse us of all advances made, not to exceed half the consular inv, our dfts, will be at 90 days date of which we will notify Lazard Freres & Co. For freights we are corresponding with the Argrumaria to whom we will give the preference. Keep us well posted on the movements of your markets.

Yours respectfully.

(Signed) BANCA BARCELLONESE.

(124 & 125.) Translation.

PALERMO, *Dec.* 18*th*, 1884.

J. Oteri & Co., New Orleans.

Following my last of 16th inst, on all a-c. sales for E. Ponticelli and F. P. Calcaguo charge only 4% commission, as practised by your friends Randazzo & Di Cristina, and telegraph E. Ponticelli average price obtained at sale. The S. S. Irthington will probably sail 21st, inst of which I am loading Sunday several boxes, next week we expect Phelps steamer Edgar. I now make an offer on sulphur, I offer 100 tons sulphur, prime quality, licata not inferior to 2nd quality, licata, at lires 106–76 per ton f. o. b. Palermo, cash payment on day shipment, offer, to remain open until 10th day Jan, 1885 after
610 which time I am free of this offer. As you cannot give me an answer in a month by mail, within 30 days please affirm or refuse the offer by telegram, should you accept, please consider all the conditions of my offer, especially requiring the payment.

Yours respectfully.

(Signed) GAETANO DI CRISTINA.

(126, 127.) Translation.

J. Oteri & Co., New Orleans.

Continuing my last of yesterday, as I have already written I have yesterday drawn for shipment, ex S. S. Camelia 741 boxes fruit at lires 4 per box, 29.64 lires at 25—£118–11–2 on Messrs. Lazarde Freres & Co., London. Said £118–11–2, I placed to your credit, in a-c. current, the B-Ls, consular invoices, and insl certificate, are attached to the draft. Will be forwarded to you by said bankers of London. The ins, premium on the 174 boxes was lires 28.92 at 25—£1–3–1- which amt. I place to your debit and you will charge to the various a-c. sales.

Mr. E. Ponticelli, through me, has shipped you 273 bokes fruit, so did F. P. Cacagua 74 boxes, the B-L. they will forward. I enclose consular invoice to said lots as you know, they took no advances. Enclose you will find B-L. for 2 casks garlic belonging to the same party who shipped to you 39 boxes lemons, they are included in the invoice sent to the bankers.

611 I enclose also mem., of all the shipments as per the ship's manifest. Please telegraph average price to the parties marked in the mem., and ask Mr. A. Di Cristina, for further information. As I told you yesternay Tagiavia steamer is in port, will probably leave next week. I have shipped on it Mr. V. Scalzo's paste and also 360 boxes of fruit from my store.

Please send to me all letters and a-c. sales included in the dft tomorrow. I will write you in regards to sulphur.

Yours truly.

(Signed) GAETANO DI CRISTINA.

(128, 129, 130.) Translation.

PALERMO, *Dec. 27th*, 1884.

J. Oteri & Co.

I am deprived of your news for a long time, I must refer you to my last 18th, inst. On the 22nd inst., I received the following telegram from London "Argrumeto, Palermo. We annul credit confirmed 5th Nov. Lazard." If said telegram reached me 5 or 6 days before I should not have used their credit, but it reached me on the same day the steamer left this port, but having made shipments and arranged all documents, as per previous agreement, I had

612 to continue my operations, and drew on Lazard of *of* London, sending them the following telegram, Drazal, London, telegram too late, same day drawn £158, writing Di Cristina at the same time I thought well to keep you informed of my present condition. If I do not receive advances on this shipment from you, I will be obliged to ship elsewhere. My operations would be inter-upted and to better make you understand and to induce your remedy I have sent the following telegram to I. Randazzo:

Randazzo, N. O.

Shipped Irthington one thousand credit annuled, confer Oteri remedy or I ship some one else-.

And to-day received the following answer:

Argrumento, Palermo.

Impossible.

I ascertaine- therefore impossible of any arrangement. I am not awaiting the acceptance or refusal of the bankers, I shall be obliged to consign to some one else, my shipment per Irthington, as it is impossible to remedy otherwise. This would displease me very much but it is not my fault.

As I telegraphed you advances were necessary and now ask you why you annuled letter of credit, the answer I can imagine, bad prospects, &c., but how is it while you cancel the credit to me, to Filiberto, Gioe, Hirzel, &c., Mr. Cusimano offers 5 fcs., advance and the Argrumaria offers the agency, promising good business? I can-
not understand you, you may tell me that such are the dis-
613 positions of the bankers, but it seems impossible in the per-
son of J. Oteri. I will await your explanation on the sub-
ject.

One thing I must assure you that every one talks aloud of this bad action on your part, I to remedy somewhat, I have stated that my credit was not annuled, which is very singular, and does your agent injustice.

I am no better than any one else, but desire more particulars. I received your telegram Argrumenta, Palermo 115 oranges, which I cannot understand, even with telegraph code.

Yours respectfully,

(Signed) GAETANO DI CRISTINA.

(131, 132.) Translation.

PALERMO, *Dec.* 4–'84.

J. Oteri & Co., New Orleans:

I confirm my last 21st, ult, and acknowledge receipt of yours 14th ditto, contents noted. In regards to the steamers of the Argrumaria, I will endeavor to obtain their consignments to you so far the asst. has not chartered any vessel every one being discouraged by the last telegrams, announcing low prices in N. Y. all shippers are scary at present, the only regularly line for your port is Phelps, Bros. line, their steamer the Camelia is expected daily.

I will endeavor to obtain a good shipment on same and
614 will advise you by telegraph. I trust that the condition of your
market is better than N. Y. Please give me all the informa-
tion you can, as a guide to my transaction. Enclose I hand you bill of my expenses as your agent from Aug 30, to Nov 3–'84, am't, to lires 123.05 at 25 £4–18–5, which amount placed to your debit, hereafter I will send you my bill monthly for all expenses which I hope will be satisfactory. With nothing further,

I remain yours.

(Signed) G. DI CRISTINA.

(134.) Translation.

PALERMO *Dec* 15*th* 1884.

J. Oteri & Co., New Orleans.

Following my last 4th inst, I received yesterday your favor 26th ult, contents of which duly noted. In reference to the letter of credit you sent G. Trapani, leaving aside my susceptability it seems you have made a hole in the water, as it will be refused this gentleman intends working with his brother of your place. I am surprised therefore that you should take action without being well informed. I will make by first mail my offer on sulphur and stipulate the condition, trusting you will await my answer. The S. S. Camelia left here for your port on 13th inst, with on board to your con-
615 signment 873 boxes lemons, 215 boxes oranges, 2 casks garlic. Said steamer arrived here on the 12th and on the morning of the 13th refused cargo, leaving me and others with fruit in store. The fruit is medium and there is some good, and hope you will remain satisfied. Talavia steamer arrived to-day loading for your port. I will endeavor to do all I can as I have told you my limits are restricted and I must try to do better. With my previous letter I give you information on the documents per S. S. Camelia.

To-day I draw, enclosed mem. of different steamers left this port for various ports of America. Without further

Yours respectfully.

(Signed) G. DI CRISTINA.

(135.) Translation.

PALERMO 26*th Dec* 1884.

J. Oteri & Co., New Orleans.

Having received good information on your house through R. Filiberto & Co., assure me that your charges will give me satisfaction, which will induce me to continue further shipments. B-L. is drawn in favor of R. Filiberto & Co., from whom I received £32-9-2, which please deduct from proceeds; said shipment is comprised of two lots, for which please make separate ac. sales. Net proceeds. Remit to me.

With kind regards.

(Signed) F. SALV. IARITTA.

616 (136.) (Translation.)

PALERMO, *Dec.* 29*th*, 1884.

J. Oteri & Co., New Orleans.

I fully confirm my last 17th inst. I enclose B-L. for 65 boxes lemons, shipped for my account on S. S. Irthington, to be sold to best advantage. Consular certificate will be included in the one of G. Di Cristina. Please call the attention of all the buyers to the large boxes containing 6 tiers of fine lemons 36 x 36.

Yours respectfully,

(Signed) E. PONTICELLI.

(137.) Translation.

MESSINA, *Dec. 16th*, 1884.

J. Oteri & Co., New Orleans.

I confirm my last respects 30th Oct. not understanding the cause of your silence, and why you do not settle with us, your style obliges us to remit all documents relative to our claim to Mr. Cussimano for settlement. Awaiting your prompt answer.

Yours respectfully,

(Signed) G. ABATE & FIGLI.

617 (139.) NEW ORLEANS, *Jan.* 2, 1885.

Messrs. J. Oteri & Co., present.

DEAR SIRS: I beg to advise that we have received from Messrs. Lazard Freres, this morning shipping documents for 163 boxes figs, amounting to £s. 2696.44, shipped by Costarelli and Figli, aboard S. S. Camellia, against which Messrs. Lazard Freres, have accepted a dft. at 90 days for £109–8–6, which will be due here on 17th Feby. next.

Respectfully yours,

(Signed) KOHN, *Pres.*

This being against credit opened by your order and for your ac.

(140.) NEW ORLEANS, *Jan'y 3rd*, 1885.

Messrs. Jos. Oteri & Co., present.

DEAR SIRS: We beg to notify you that we have again received from Messrs. Lazard Freres, shipping documents for—

596 boxes lemons } Shipped on board str. Camellia,
145 " oranges }

against which the London house has accepted the dft. of G. Di
618 Cristina, Palermo, £118–11–2 at 90 days which will be due and payable here on 25th Feb'y next, and unless you take charge of these goods on arrival, we shall have them sold for your acct., I hold you liable for any difference and damages that may occur, we having opened credits on London by your order and for your account.

Yours respectfully,

(Signed) KOHN, *Pres.*

(141.) Translation.

BARCELONA, *Jan. 3rd*, 1885.

J. Oteri & Co., New Orleans:

We confirm in our last 21st ult. We enclose herewith b. l. for 549 boxes lemons shipped on S. S. Irthington, on safe arrival. Please sell to best advantage. Please give us account sales for the oranges shipped you on the 22nd Oct. per S. S. Jason, as Mr. Scalzo has as yet made no returns. Awaiting your favors.

(Signed) BANCA BARCELLONESE.

(143.) Translation.

PALERMO, *Jan.* 4, '85.

J. Oteri & Co., New Orleans:

619 Confirming my letter 27th ult. I am possessor of your favor 10th Nov. by S.S. Edgar. You received 186 boxes lemons from Mr. E. Ponticelli who will send you b. l. and now enclose consular invoice, which is made in my name. Make necessary arrangements with your custom-house. Enclosed find my bill of charges as agent, from Dec. 1st to present day. Amt. to lires 128.05 at 25, £5 2 5 which please place to my credit. Enclosed mem. of vessels for different American ports.

Yours respectfully,

(Signed) GAETANO DI CRISTINA.

(144.) Translation.

MESSINA, *Jan.* 4, '85.

J. Oteri & Co., New Orleans:

I confirm my last 13th ult. after which I received yours 10th ditto. Contents well noted. I await good results on the sale of oranges of Mr. Vadala. I received a telegram on the 27th ult. from Lazard Bros. & Co., London, advising me annulled my credit. The same has been confirmed by letter on the 27th Dec. through orders of their N. Y. house, such an annulment gave me a bad impression and I await your letters of explanations. The fruit business this year makes a man's hair curl, and I am glad that I have not given advances even on guarantee. From Dec. to the present day
620 we can count 5 official failures. With kind regards.

(Signed) LETTERIO TARRO.

(146.) Translation.

PALERMO, *Jan.* 7, '85.

J. Oteri & Co., New Orleans.

I am as yet deprived of your favors I can confirm my last 4th, inst., as I have not received my d'ft per S. S. Irthington. I have reason to think same is accepted, therefore I send with the present relative documents through Messrs. Lazard Freres & Co., London. You will receive B. L. 987 boxes fruit, ins. certificate and consular certificate, including the paste for Mr. Torre and 65 boxes for Mr. Ponticelli.

Enclose also mem. of shipments, telegraph me as usual the average price.

The d'ft is drawn for 4 fcs., each box, 987 boxes, Italian lires 39.48 at 25—£157–18–5 for which debit me, said d'ft is on Lazard Freres & Co., London, 90 days date from Dec. 22, '84, please pass to my credit £1–9–2, equal to lires 36.43 amt. of ins. on 987 boxes. Don't fail to send me all the ac. sales.

Yours,

(Signed) GAETANO DI CRISTINA.

621 (148, 149.) PALERMO, *January 7th*, 1885.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: We beg to confirm our respects of the 6th inst., when your valued favor of the — have reached us.

We credit you for £4–8–5, for the account salt per Jason.

Regarding to the almonds we cannot agree to what you say. If the weight was less, you maybe see that they were robed on board, and we may be not responsible of them. We can tell you that the bags were weighed here under survey and the weight was right. We have this season shipped almonds for different places, and not one claim from the receivers. The Irth. has given us more trouble than —. Lazard has accepted our drafts, because our honest house could not refuse. We hand you now mem. of fruit shipped on the boat; also of drafts on Lazard Bros. & Co.

There has been some mistake in the shipment, which we rectify in the enclosed invoices. We send you also bill of lading of 111 boxes fruit, per Irthington. We hand you also statement of 4,406 boxes, *ex* S. S. Irthington, in which appears the total advance on it is of £645–11–1, which we credit you in account. Messrs. Tagliavia & Co. intended to consign the Irthington to your house, but
622 after your strange proceeding in can- the credit, they declined, and they had full reason.

We shall be very glad to hear from you the reason for having cancelled the credit. Regarding the price of lemons, you could not forget that you wanted a prime fruit, and they could not be got at same prices than usual goods. On arrival of the steamer please let us know fully about the quality of the 332 boxes. Please to observe that the mistake is in the bill of lading of 500 boxes in which appears 500 boxes lemons instead 400, and 100 lemons when they are—

274 boxes (360) J. Oteri & Co.,
58 " (300)
134 "
34 " oranges

500

So you will please do not make a claim to the steamer for this error, which we observed after the sail of the Irthington: shipments of fruit have been very moderate and in December the statement is of 35,000 lbs. less than last year. In Messina shipments have also been very few, and we look for better prices in the States. Murate oranges are of common grade, costing at £5.50 or £6 per box. Mourate oranges are of splendid quality and really good.

For Feb. and March have been bought at £6.80 and £7.20 per box. Lemons superior quality £7.65 common quality to good, £6.01 £6.80.

We do not look for heavy shipments during this month. Without anything else for the present,

623 We remain, dear sirs, yours very truly,

(Signed) R. FILIBERTO & CO.

(150.) Translation.

MILLAZZO, *Jan. 7th*, 1885.

J. Oteri & Co., New Orleans:

I think that on the receipt of the present you will have received my shipment, 549 boxes lemons. I must inform you that after some delay Mr. Tagliavia concluded to assume frt, expenses between here and Messina, as his steamer failed to come here and to the effect I have a telegram—Not receiving my B-Ls. I went to Messina where to my surprise I ascertained that we were charged 2 shillings frt, while other shippers 1½ shillings, which means a difference about 300 lires.

This I dont consider commercial treatment and I leave to you this settlement. After sale of our shipments 15th, ult., 931 boxes fruit, send us an explicit telegram, your first one announced 3.80 while the catalogue shows 3.10, 2.30, 2.55, 2.65. We have shipped so far 3200 boxes, and we have received 4357 lires, the balance was paid by us, although there is 5000 lires in bank to your credit, which am't was refused to us and we have worked without
624 it. We have made other shipment, via, Liverpool, London, Messina as per our letters 14th, ult, to Mr. Scalzo. Hoping that you will take in good consideration the present.

I remain your friend.

(Signed) G. ACCETTA

(151.) Translation.

BARCELONA, *Jan 8685.*

J. Oteri & Co., New Orleans.

We confirm our letter 3rd inst, enclosing B-L 549 boxes lemons ex Irthington.

Yours respectfully.

(Signed) BANCA BARCELLONESE.

625 (151 & 152.) Translation.

BARCELONA *Jan 8th* 1885.

Jos. Oteri & Co. New Orleans.

We confirm our last Dec 5th and acknowledge receipt your favor 24th ult. Fruit even if the conditions of your market were more encouraging, we could not use it, for the reason that Messrs. Lazard Freres & Co., London have cancelled our letter of credit.

Although we do not understand the cause of such cancellation, we trust you will open another credit to take advantage of any favorable opportunity your market may present.

Sulphurs, As it is difficult to obtain freight room we are unable to make an open offer for the small lot of 100 tons.

Admitting that the freight will not exceed 10 % to-day's quotations are 2d, ext quality unmixed 96 %

2 good " " 94 %

per ton 2240 including freight to New Orleans.

Examine these prices, and if you can send us an order, nothing will we neglect to conclude the transaction.

Awaiting your information.

Yours respectfully.

(Signed) WM. COSTARELLI & FIGLI.

(154.) Translation.

PALERMO *Jan* 12, 1885.

Jos. Oteri & Co. New Orleans.

626 Confirming mine of the 24th ult. I received your favor 20th, ult, informing me of the cause that Mess, Lazard Freres & Co., have annulled the letter of credit. If on one side you are right on account of the disastrous results obtained in fruits, you are wrong to do it at a time when a steamer is loading at which time your friends believing in your loyalty and honor could make consignments. While the B-L. are all mailed, exchanges negotiated, the shipper finds his draft*r* returned protested ; this is no way of acting in faith, hereafter your letters of credit although confirmed by your banker will not acquire faith.

If said annulment is done when no steamer is in port each shipper is notified and acts otherwise, your action does injustice to you and the banker who opened the credit.

I predicted such catastrophy, therefor made no shipments to America. As I have already written have made no offers in the 100 tons sulphur, and will not do so unless you open a credit for the approximate amount of the sulphur, said credit to be open for two months and only to be annulled and confirmed by the banker. If you have any orders for almonds, filbut, &c. give them to me. I will treat you as well as Filiberto. Through Mr. Solari I hope you have received the sack sumach.

Yours, respectfully,

(Signed) G. C. HIRZEL, JR.

627 (155.) Translation.

JAN 15TH 1885.

Jos. Oteri & Co. New Orleans.

In due time I have been favored with your circular, the contents of which I have taken good note.

With the present I have the honor of offering to you my services in all you may require in lemons, oranges or essences, trusting that I will be favored with your orders. Refer-ing to the marks described below which are well known to you I await with pleasure your orders which will be filled promptly and correctly.

Yours respectfully,

(Signed) M. DE PASQUALE.

Christopher Columbus lemons	300 size	£690.
Crown	360	£650.
Imperial mountain oranges	160	£10.
Crown oranges	200	850
Crown "	230	8

First. Choice export qual f. o. b. Messina, without limit payment on open credit, with draft on London for the whole amount. I am open to receive orders -or any fruit account transaction as practiced with N. Y. Boston, and other places.

628 (156.) Translation.

PALERMO, *Jan* 31*st*, 1885.

Jos. Oteri & Co., New Orleans.

My last favor addressed to you was in date 7th, inst., after which I received your favor 24, ult, contents noted.

Meanwhile I cannot understand why the account sales per S. S. Coronilla have not reached me, while all others have received theirs. I hope that this delay is not caused by anything of importance, and that I will shortly receive them. I am surprised also at not receiving your telegram announcing average price per Camelia, having been obliged to obtain news on the sale of said steamer through other agents. Permit me to state that this action leaves much to be expected of you, as I thought you were more punctual and exact in whatever is termed commission business, especially from you that pretends to have had a long commercial life. You write me only one letter per month. Hoping to receive shortly news from you.

I remain.

(Signed) GATEATNO DI CRISTINA.

(157.) Translation.

PALERMO *Jan* 27*th* 1885.

Jos. Oteri & Co., New Orleans.

629 Continuing my last 21st inst., I have received your favor 3rd do, enclosing account sales for my 441 boxes lemons per S. S. Coronilla, and also memorandum of other lots to your consignments, with the total net proceeds encluding mine $233.77, please take notice that I have always kept my account in pound sterlings, and I desire to continue likewise, otherwise being deprived of particulars I could not very well reduce the pounds into dollars, therefore our account stands in this way.

Proceeds S. S. Coronilla	$234 05	= £47 15 4
Less paid in Messina	28	1 2
	$233 77	= £47 14 2

which amount I place to your debit in account current. As yet I have not received the sales for the other lots by S. S. Coronilla and I am much surprised not receiving the prices per S. S. Camellia, as per my written request. Please explain to me why you charge me in the account sale for the said 441 boxes with $6.91 insurance. Without further

I remain.

(Signed) GAETANO DI CRISTINA.

(158.) Translation.

MESSINA *Feb* 12*th* 1885.

Messrs Jos. Oteri & Co., New Orleans.

We confirm our letter, 20th Sept enclosing draft for $10. on Hector Terni, and our letters October 30th and Dec 16th, we are still without any answer, we frankly must acknowledge we do not understand your mode of action, you could have easily
630 answered saying that you had received the $20., because if youu remember you became responsible for such payment. You wanted to pay us before the time, therefore we beg you as security to settle said amount with Messrs Cusimano & Co., of your place. Awaiting your answer

We remain.

(Signed) ABATE & FIGLI.

(159–160.) Translation.

PALERMO, *Feb.* 17, 1885.

Messrs. Jos. Oteri & Co.

We have received yesterday the following telegram :

This telegram not being signed, we thought it yours. The price of sulphur has increased, and is well sustained. With a great deal of trouble we have obtained an offer for 200 tons, seconds at £14–16–6 per ton f. o. b. Palermo, Feb., shipment, freight may be from 9 to 10 per ton in full. Your telegram gives us to suspect that you had a vessel chartered by you. Please be more explicit in future, not to make any mistake. We are surprised at not receiving your telegram on fruit sales S. S. Irthington while all others have re*chi*ved them

The Catania shippers telegraph to us daily desiring to know the results of their fruit, and we are unable to give them any answer, your telegram could have been charged on the account sales without much work. We trust that the sale has been satisfactory, having no loss on this first shipment. The orange crop has been
631 greatly damaged by the snow. The mountain fruit this year is of good quality, but are a little dear. We have bought some 30 to 35,000. boxes of the best mountain oranges for Feb., March, and April at $10 per box and also 6,000 boxes best mountain lemons. Awaiting your favors.

Yours.

(Signed) R. FILIBERTO & CO.

(161–162.) Translation.

MESSINA, *Feb.* 19*th*, 1885.

Messrs. Jos. Oteri & Co.,

We are in possession of your letter 29th inst., and we learn with great displeasure that the deal on 163 boxes of figs, has not brought

you the profit you hoped, and that now you are trying to cast the loss suffered in a manner that seemed to us unfair and discouraging for the continuation of our relations.

As we have already written, your orders depended entirely upon the quarantine restrictions, which did not permit us to affect the shipment sooner, not only for want of goods, but also for want of steamers.

Although if the Camellia had made a voyage direct from here would have arrived in time. As regards to quality we again assure you it was excellent, and if you choose now to complain, we can not fail to see but your intention of endeavoring to consider our shipment not your business.

We do not need to tell you that we do not approve your
632 mode of action and we must inform you that we are sorry that we ever entered into any business transactions with your house.

Yours respectfully.

(Signed) M. COSTARELLI & FIGLI.

P. S.—We confirm our letter Jan 8th, we do not fail to mention that your request is very surprising much more so because it should have been your duty on receipt of documents ex Camellia, not wishing to accept the figs on your own account, you should have asked us by cable instructions on the disposition of the merchandise in question, instead you have sold the goods without saying anything and seeing that the result was not satisfactory, exact of us to bear the consequences. We do not intend to do business thusly.

(Signed) M. COSTARELLI.

(163.) Translation.

MESSINA, *Feb 19th*, 1885.

Messrs. Jos. Oteri & Co., New Orleans.

I have duly received your favor 3rd. and 22nd. Jan enclosing account sales for my shipment 133 boxes oranges ex S. S. Camellia leaving a small net proceed of £13–80 with a check on London at sight. I abstain for the present to make further shipments for the prices are too low.

Yours respectfully

(Signed) G. PADALA, *Fu Fo.*

633 (164.) MALAGA, *23rd. Feby* 1885.

Messrs. Joseph Oteri & Co., New Orleans.

DEAR SIRS: At the invitation of several important growers and in view of increasing business, we have determined to establish a branch house in Almeria.

We beg leave to tender you our best services there and to assure you that every exertion shall be made to benefit those who may place their interests in our hands.

We have to respectfully request that all foreign correspondence be addressed to Malaga.

We are yours obediently.

(Signed) CAMPUZANO BROS.

(165–166.) Translation.

PALERMO, *Feb. 28th*, 1885.

Jos. Oteri & Co., New Orleans.

634 Your favors 19th & 20th, ult, reached me in due time, the contents noted, the later of the 20th enclosing acct sales for 40 boxes, ex S. S. Camellia and I notice an over-charge on marine insurance, it should be $3.58, while you charge $3.50, for a telegram which I failed to receive, you must have dreamed having sent it as I have always complained in my previous letters of your way of acting little becoming a commission merchant, far from full-filing orders given, therefore I am surprised to hear of this telegram.

I suppose you call a telegram your writing on the back of your letter, which gave me no information whatsoever, and concluded nothing.

I must assure you this is the first time I have been compelled to laugh in business. I have received in separate enveloppe a memorandum without signature or letter accompanying same, said memorandum gave me the am't, in different net proceeds in $440.40 without being reduced in poonds sterling or without the rate of exchange. Why should you charge $5.66 marine insurance and again charge me $3.50 for same on my own account, sales, do you want me to pay twice for the same thing.

This is a very strange way to settle acc'ts, and I hope it is not the fruit of long commercial life your manager boasts of. I ask again why did you fail to send acc't sales to the different shippers, ex. S. S. Camellia? It seems to me that a commission merchant should punctually give exact account of all consignments, so that the shippers may decide to continue or discontinue from this rule you vary since the begin-ing.

635 Hoping that you will soon modify everything.

Yours truly.

(Signed) GAETANO DI CRISTINA.

(167–168.) Translation.

MESSINA, *March 3rd*, 1885.

Messrs. Jos. Oteri & Co., New Orleans.

After having written to you on the 19th ult., we received yesterday your letter of the — enclosing acct. sales for 163 boxes figs shipped to you per S. S. Camellia in execution of your orders.

As we have heretofore stated in our previous letter we were not the cause of the delay in retarding the shipment, we could not ship any sooner on account of the sanitary measures and also for want of steamers.

We are convinced that it was not your intention to refuse the figs on arrival, otherwise you should have telegraphed us your refusal; you had no right to dispose of any merchandise which you did not consider yours.

We do not need to state that we do not approve your ac't*t* sales,

and trust you will not return upon a business which is long since settled.

Yours respectfully.

(Signed) M. COSTARELLI & FIGLI.

636 (169.) Translation.

PALERMO, *March 19th*, 1885.

Messrs. Jos. Oteri & Co., New Orleans.

We are possessors of your favor 24th enclosing acct. sales of fruit, ex S. S. Irthington, and acct, current showing $92.87 to our favor. These acc'ts are under examination, we will enter them if found correct. We also found enclosed a draft for £19 13, on Mr. Gaetano Di Cristina, who has refused payment of same stating he had no funds of yours.

Please therefore forward us remittance for same amount. Without further.

We. remain.

(Signed) R. FILIBERTO & CO.,

(170, 171.) Translation.

MESSINA *March 30th* 1885.

Mr Jos. Oteri. New Orleans.

My brother of the firm Perrie Becker Ilardi, gave me your address. He thought that you would have returned here, before leaving, but waited in vain, he intended speaking to you in rela-
637 tion to some business with his house; I hope that you will remember as I am entirely at your disposal. The object of the present is not business, but to ask you a favor for an old widow of Palermo, Mrs. Gasparo Malato, husband of Theresa Davi, died in St Louis last year, where he had a liquor store, he lived with an American woman, having abandoned his wife here, who is now living with the son of her sister, what this poor woman now desires is to obtain possession of whatever her ligitimate husband left. Please obtain all the information necessary on the subject and report same to me or to Mrs Theresa Davi Malato, assured of your philanthrophy and knowing that you will do all in your power I have but to thank you in advance.

Yours respectfully.

(Signed) ANTONIO ILARDI.

(172, 173.) Translation.

PALERMO, *March 17th* 1885.

Messrs Jos. Oteri & Co., New Orleans.

My last add. to you was in date 28 ult, I have received yesterday your two favors of the 24th ult, enclosing acct sales, per S. S. Irthington with a total nett proceeds of $727.87 which amount I have placed to your debit acct current.

On the 14th inst, Mr R. Filiberto presented your draft a five
638 days sight for £19 13 which I did not accept for the following reasons.

1st. Because the advice reached me on the 16th while the draft was presented for acceptance on the 16th.

2nd. Because I have learned through your papers that your firm was in liquidation through court, and did not think proper to give out funds by order of your manager.

3rd. Because you never furnished me the funds for the special payment not knowing positively my position by our acct., current, as there are several items short to my credit, for instance my rebate commission and my bill of expenses and charges, as your agent in such capacity I was confirmed through your circular Aug. 26th 1884, the original of which signed by you is in my possession.

In consideration please excuse me if I did not honor your respectable signature.

Yours respectfully.

(Signed) GAETANO DI CRISTINA.

(174.) Translation.

PALERMO, *March* 21*st* 1885.

Mr. Jos. Oteri New Orleans.

On the 21st of January I wrote you enclosing bill of lading and invoice for thirty one boxes of lemons marked F. F.

639 I am surprised that to the present day I have not received acct, sales the consequence is that every gard-ner interested in this shipment has applied to other agents, on the 8th of Jan. I have written another letter on the subject and so far have received no answer. You should have advised me that you could not assist me.

With kind regards.

Yours respectfully,

(Signed) F. FARDELLA *Fu C.*

(175.) Translation.

PALERMO *Feb.* 14*th* 1885.

Messrs. Jos. Oteri & Co., New Orleans.

We confirm our last respects 16th Dec enclosing B–L. for 50 boxes ex Camellia for which we have not received account sales.

After the above we received your favor Nov 28th the contents of which are noted.

The object of the present is to send you B–L. 60 boxes for account of our friend Gioranni Anello shipped on S. S. "South Tyne" which left here for your port on arrival sell to best advantage.

Concerning account sales please follow my instructions pre-
640 viously given. Awaiting your further favors.

Yours respectfully.

(Signed) M. SAITTA *Fu S.*

(176.) Translation.

PALERMO *Feb'y 21st*, 1885.

Messrs. Jos. Oteri & Co., New Orleans.

I cannot understand why I did not receive as yet account sales for the 39 boxes lemons and 2 casks garlic shipped by me to your consignment on S. S. Camellia, through your agent Mr. Gaetano Di Cristina.

This don't seem to me business-like, you have not even acknowledged receipt of my letters.

I trust to receive these sales without any further delay. Your agent informs me that you desire to know the number of strings of garlic in each cask, and now inform you that each cask contains from 26 to 27 bunches, equal to 104 or 108 strings.

Awaiting your letters.

Yours respectfully.

(Signed) MATTEO MURCIA.

641 (177.) Translation.

BARCELONA *March 13th* 1885.

Messrs. Jos. Oteri & Co., New Orleans.

We have read your favors 22nd. Jan. 12th, & 19th Feb We take note of the proceeds ex S. S. Edgar.

1182 boxes with the total	$616 03
549 boxes ex S. S. Irthington	$358 38
Total	$974 41

Which at the exchange equal £199 7 5 for which you sent us an exchange of equal amount.

Please reimburse us of the amt. due us for commissions to date as follows.

$24	55	shipments Jason.
30	55	Edgar.
17	50	Irthington
72	60	

To which add the commission due us ex S. S. Bessie Morris and make one remittance of all.

We must make the following observations on the sales Feb 19 ex Irthington.

642 The lots 268, 269, 271 were sold for $1.85 instead of $1.80 as accounted by you, By looking over the catalogue you will perceive you made a mistake. Please remit amt., $13.35 being the difference, on 267 boxes.

Yours respectfully.

(Signed) BANCA BARCELLONESE.

(178.) Translation.

PALERMO *March 11th* 1885.

Messrs. Jos. Oteri & Co., New Orleans:

By your acct. sales per Edgar and Irthington, I perceive that you have not allowed me the rebate commission of 1 %, which surprises me somewhat. As I think this omission is a mere oversight I call your attention to it so you may make a remittance of same. Awaiting your favors.

Yours respectfully,

(Signed) E. PONTICELLI.

(179.) Translation.

CATANIA *March 15th* 1885.

Messrs. Jos. Oteri & Co., New Orleans:

643 You will favor me by sending me copy of acct. sales for 1430 boxes per S. S. Irthington, as to the present day I have received none from Filiberto of Palermo, at any rate I desire to have a copy from you, and to learn from you the prospects of lemons on your market, having intention to make a large shipment by the month of April. Assured that you will favor me.

I remain yours truly,

(Signed) GILDO MAURO.

(180.) Translation.

PALERMO *April 30th* 1885.

Messrs. Jos Oteri & Co., New Orleans.

We have been favored with your letter of the 25th ult, contents duly noted, enclosing acct sales for 60 boxes shipped by my friend G. Anelo, the proceeds of which are covered by London exchange for £10–7–3. The object of the present is to advise you, that according to your instructions Mr. Anelo claimed the amt due him for 50 boxes *ex* Camellia from your agent, who absolutely refused settlement of same. Please therefore make us a remittance with exchange on London on receipt of the present.

Without further just now.

644 We remain yours respectfully,

(Signed) TERAFINO SAITTA FIGLIO.

(181.) Translation.

ST. GEORGIO, 10, 4, '85.

Messrs. Jos. Oteri & Co., N. O.

I acknowledge the receipt of the power of attorney sent me from your firm for the collection of sums of money from Salvatore Gioe, of Palermo, and Gaetano di Cristina, with relative acc't sales and acc't current. I will not fail to do all in my power in order to protect as soon as possible your interest in Palermo. In mean time I inform you that by this same mail I have sent proper instructions to Prof. Lomonaco residing there, and if it is necessary to bring the

case in court. I will have all the documents registered and duly authenticated before opening the case.

On receipt of an answer I will keep your firm informed, in meantime accept my thanks for the confidence shown me, which I hope will increase if I am successful in the collection of those credits.

Yours respectfully, G. DELL'ORTO, *Att'y.*

(182.) Translation.

ST. GEAGIO, *Aug. 5th*, 1885.

Mr. Jos. Oteri, New Orleans.

In continuation of my last, May 10th, I have to announce you that through Prof. Lamanico and my direct solicitations to Salvatore Gioe and Gaetano di Cristina, they had promised to make a shipment of fruit in part payment of their debt and the balance to be liquidated next season, I have received the following answer, dated June 29th.

Gioe, he is ready to make the shipment promised the balance next season. For him any declaration is superfluous, as he is an honorable man. I have taken note of his reputation. If the vessel leaves without a shipment, I will then have all reason to dispute his words. Then we shall proceed against him.

Di Cristina, he says that he owes but a few dollars, which he is unable to satisfy on account of a bad season. He is ready for next season at which time we hope re will settle; for the present he cannot. He will await, therefore, with patience this season.

645 Should you give me other orders I will not fail to communicate them to your debtors. Meanwhile I will push them to keep their promises.

Yours respectfully,

(Signed) G. DELL'ORTO, *Att'y.*

Five exhibits annnexed to defendant's answer copied at page 13 of this transcript.

645*a* UNITED STATES OF AMERICA, } *ss:*
Eastern District of Louisiana, }

Personally appeared before me, the undersigned authority, Luigi Dell'Orto, who, being sworn, says that he is familiar with the Italian and Spanish languages and that the translations of the foregoing letters, copied at pages 30 to 56, inclusive, and from pages 522 to 645, inclusive, of this transcript, were made by him from originals contained in letter book marked A and file of letters received marked B, annexed to and made a part of this transcript, and that the same are correct translations.

LUIGI DELL'ORTO.

Subscribed and sworn before me Oct. 3, 1888.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

646 U. S. Circuit Court.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Testimony taken by consent at the law office of Mr. W. S. Benedict, No. 29 Camp street, on Wednesday, January 12th, 1887, at 3 p. m., on behalf of defendant.

Appearances: Mr. W. S. Benedict, attorney for plaintiff; Mr. Joseph P. Hornor, attorney for defendant.

Testimony of Mr. Luigi Dell'Orto, page 647.
Direct examination, p. —.
Cross-examination, p. 652.
Exhibit "P" 1, page 658.
" "B" 1, " 665.
" "O," " 666.

Reported by D. O. Day, stenographer.

647 NEW ORLEANS, *January 12th*, 1887.

The further taking of testimony in the case of Vincenzo Scalzo *et als. vs.* Joseph Oteri was this day resumed at 3 o'clock p. m.

Present: Mr. W. S. Benedict, attorney for plaintiffs; Mr. Joseph P. Hornor, attorney for defendant.

Mr. LUIGI DELL'ORTO, sworn on behalf of defendant, says:

By Mr. HORNOR:

Q. Mr. Dell'Orto, what is your business?
A. I am a member of the firm of C. A. Fish & Mompany in this city.
Q. Merchants in this city?
A. Merchants in this city—fruit merchants.
Q. How long have you been in this business as fruit merchant in this city?
A. Going on four years.
Q. Have you been a book-keeper?
A. Yes, sir.
Q. And accountant?
A. Yes, sir, and accountant.
Q. What experience have you had as an accountant?
A. Well, I have worked for Mess. A. Cusimano & Co. and I
648 have worked for Mr. William D. Clarke.
Q. For how long?
A. A year and a half, and then I started the books for my own firm, and then I have my sheepskin diploma from Dolbear's college.
Q. You consider yourself, then, a good accountant?
A. Yes, sir; that is my opinion.

Q. I now ask you what books are these (witness being shown books marked "L 1, L 2, and L 3").

A. The book marked L 1 is the cash book; the one marked L 2 is the journal, and the book L 3 is the ledger.

Q. Of what?

A. Of the business of the firm of Joseph Oteri & Company.

Q. Who made these books?

A. They were written by Mr. Joseph Bein.

Q. Did you have anything to do with them?

A. Yes, sir.

Q. What did you have to do with them?

A. Mr. Joseph Oteri called at my office on a certain day; I don't remember the day, but he was all excited, and he stated he was in a lot of trouble.

Q. I don't want to know what Mr. Joseph Oteri told you. My question to you was, what did you have to do with making these books up?

649 A. Well, I was asked by Mr. Joseph Oteri to make up a balance-sheet of his business, as he would require it in court. He gave me the books that were kept before, and I was not able to give him what he asked for, as the books did not show any balance. I could not understand them, and I told him the best thing to do would be to start the books over again. I would take memorandas from the old books, and, with his memory, refresh me, and I started a new set of books. So I picked out of those books all of the entries (witness alluding to books marked Exhibits "H t," "I t," "L 5," "L 4," "L t," and "K t") and I started to journalise the general transactions of the firm of Joseph Oteri & Company. From the abstract I obtained from these books I was able to render him a balance-sheet or trial balance.

Q. Then I understand you to say that from these old books of Joseph Oteri & Co. you have constructed this new set of books?

A. Yes, sir.

Q. With the help of Mr. Bein?

A. With the help of Mr. Bein. As the books before were kept in Italian, Mr. Bien was not able to understand them.

Q. You assisted him?

A. Yes; I assisted him.

Q. Witness is shown exhibits marked "A, B, C, D," annexed to the answer in this case, and he is asked, Are these the balance-

650 sheets of these new set of books which he made?

A. Yes, sir; these were made by Mr. Bein at my dictation.

Q. These are correct according to your new set of books?

A. Yes, sir.

Q. Now, Mr. Dell'Orto, you have stated that you assisted in making out these new set of books by the memory of Mr. Joseph Oteri?

A. No, sir.

Q. You did not say that?

A. I said that with these books and with the assistance of Mr. Oteri I was able to better jou-nalise the entries.

Q. Now, what I want to know exactly is what assistance Mr. Joseph Oteri rendered to you.

A. Well, for instance, I would open a book and I would find Joseph Oteri & Co. credited with five thousand dollars, and I would say why are you credited with five thousand dollars, and he would explain why, and he would explain how and why every transaction had occurred.

Q. Now, do the figures in your books differ in any way from the figures in the set of books from which you took them?

A. No, sir.

Q. Are there any entries in this new set of books that you have made that are not accounted for in the business?

A. Yes, sir.

651 Q. There are some?

A. Yes, sir; there are some that were never put in these new set of books.

Q. Did you have any other papers to aid you, such as invoices?

A. Yes, sir; I had others, and I had the invoices of the auctioneer.

Q. You have all these documents here also, didn't you?

A. I cannot tell whether I had all of them, but I know that I reviewed lots of them. I might have seen every one of these, but I don't remember each and every one specifically, but I know that I handled all the papers that he had.

Q. Have you made translations of the letters in Italian that are in the letter book?

A. I have made some translations, but I don't know what Mr. Oteri did with these translations from the letter book and some of the cetters received.

Q. You understand the Italian language?

A. Yes, sir.

Q. Well, that is your native language?

A. Yes, sir.

Q. Are these all your translations?

A. Yes, sir; that is all my handwriting and translations.

Q. Look at all of them and see what they are.

(Witness is handed the letters for his examination and identity.)

A. Yes, sir; these are my own handwriting.

652 By Mr. HORNOR: I offer, introduce, and file in evidence the translation of letters made by the witness from the letter book, marked Exhibit "P 1" to page 7, inclusive.

Cross-examination by Mr. BENEDICT:

Q. Mr. Dell'Orto, are you acquainted with Mr. I. Randazzo and Mr. Scalzo?

A. Yes, sir.

Q. Did you ask their assistance or their knowledge of the business of the firm of Joseph Oteri & Company when you were at the request of Mr. Joseph Oteri making up the new set of books of the firm business?

A. No, sir; they never came near me nor I near them.

Q. Your sole information outside of entries you saw in the old books and such papers as were given you was given you by Mr. Joseph Oteri?

A. By Mr. Joseph Oteri himself.

Q. Can you recall the time when that was done—when you started your new set of books with the assistance of Mr. Bein?

A. Well, I can recall the time by the letter book, because as soon as it came I had some letters to write, and that gives the precise date.

Q. Please look at the letter book and ascertain the precise date.

653 (Witness is handed the letter book and he examines it for the date.)

A. I started January 26th, 1885.

By Mr. HORNOR:

Q. That was about the time you commenced making these entries?

A. Yes, sir.

By Mr. BENEDICT:

Q. You were regularly employed by Mr. Joseph Oteri as the book-keeper?

A. No, sir; I did it as a favor and as a disinterested party.

Q. Did you receive any compensation for your services?

A. None whatsoever.

Q. Were you aware of the fact at that time that a dispute had gone to the court between the partners and the firm?

A. I was not aware it had gone to court, but I was aware there was a misunderstanding between the partners. As all three of them were friends of mine I thought I would help one as well as the other by doing what I done.

Q. Outside of the entries in the books—the old books which explain themselves—did you have any occasion to look for any vouchers for any of the entries unless they were in doubt in your mind or Mr. Oteri did not properly explaim them to you?

654 A. Every entry I made I would first refer it to the old books to see if it would correspond, and then I would look up the voucher if they were there.

Q. How many entries did you find for which there were no vouchers whatever?

A. I don't remember.

Q. When you could find no voucher and the entry in the old books were doubtful, what would you do then?

A. The correspondence would explain in some way, and then the account-currents that used to come from Sicily, or even the acknowledgement that our account-current- were correct.

Q. And you would obtain the assistance of Mr. Joseph Oteri to explain those things that you did not understand?

A. I could not very well understand all the books.

Q. You had no other knowledge except such as was required by the various methods you have stated?

A. No, sir; and my interference in this case was for the benefit of all the parties concerned, as I thought.

Q. In other words, your acts were done in good faith?

A. Yes, sir.

Q. Although you have been requested by Mr. Joseph Oteri?

A. Yes, sir; and I have been acquainted as well with Mr. Randazzo and Mr. Scalzo as I have been with Mr. Joseph Oteri.

By Mr. HORNOR:

655 Q. Have you got the accounts of any settlements that have been made of the debts due to the concern of Joseph Oteri & Company since you closed those books?

A. Yes, sir; my father is a judge and has just retired from actual service.

Q. Where?

A. In Italy.

Q. Where?

A. In Turin, and having to facilitate matters, and knowing no proper parties to intrust business of a friend, I sent to my father in Palermo. Here is a settlement which he made (it is a long letter, and if it needs translation, all right); but in whole the settlements were made here. There is Salvadore Gioe.

Q. Do they speak for themselves?

A. Yes, sir; this is the collection at Palermo — made. He had to compromise with those parties from whom he could not get the full amount, rather than go to court and making large expense. He compromised for a round sum.

Q. Does this show it?

A. Yes, sir; this shows the compromise made with Salvadore Gioe, ten thousand francs, and here is a compromise made with Di Cristina, twelve hundred & seventy liras. Here are letters from my father explaining exactly the course he pursued.

Q. This compromise was the best that your father could make?

A. Yes, sir; it was the best that he could make, and I don't
656 think that anybody could do any better.

Q. And then out of this Mr. Joseph Oteri received——

A. Out of this Mr. Joseph Oteri received $380.95 cash and paid out $102.41.

Q. For expenses of attorney——

A. For expenses of attorney, &c., and besides that he paid the attorney twelve hundred and seventy-five francs, this is for his travelling expenses, and seveenteen hundred and seventy-five liras were his fees. He received in payment from Mr. Salvadore Gioe two thousand francs cash and five hundred francs cash. This five hundred francs was given to the lawyer for his expenses, with two thousand francs as balance of $380.95, and these different notes balance the rest, and it has paid twenty-five hundred francs yearly. The attorney was paid with these notes in one, two, three, four, and five

years. They were given by Di Cristina, amounting to twelve hundred an- seventy-five liras.

By Mr. HORNOR: I offer this statement as part of Mr. Dell'Orto's testimony, marked Exhibit "B 1."

I also offer in evidence letter from Philip Carroll, consul of the United States at Palermo, Italy, to Joseph P. Hornor, dated August 24th, 1886, and a translation accompanying said letter, and a letter of the 21st August, 1886, to said Charles Carroll, consul, from
657 Tagliere, chief of police at Palermo, marked Exhibits "O 1 & O 2."

Defendant here rested.

From page 3. Translation.

7 OCTOBER 4.

Mr. Gaetano Di Cristina, Palermo:

In possession of your favor 15th last also of your telegram 30th.

We have not been able to go further on cash remittances or credits on London, simply because our partner Mr. Ignazio Randazzo is still behind time & defective in the payment of his capital share.

This latter would want as capital to give us a credit of $3,700 which he claims against you which we cannot at all take in consideration and this you will find fully reasonable.

It is necessary therefore to await the arrival of Mrs. Scalzo and Di Cristina to put all in proper light.

Our Mr. Oteri in a line altogether private states that whatever may eventually occur he intends if agreeable to you to continue the commercial relations with you, even if by any combination the present firm should dissolve. You should not therefore attribute any fault to Mr. Oteri for the delay in credits &c., but attribute it entirely to Mr. Ignazio Randazzo.

658 We are in hopes to learn on this first steamer of a good number of boxes shipped by you, which would greatly encourage Mr. Randazzo.

Without further for to-day we salute you.

(EXHIBIT "P 1.")

From page 20. Translation.

NEW ORLEANS, 7 *October* 1884.

Mers R. Filiberto & Co., Palermo.

We have the pleasure of acknowledging receipt of your favor of 19th ult. and your cable concerning the salt.

After having used all due practice had to answer. It is impossible with my great displeasure.

I cannot officially notify you of having dissolved from Mess. Randazzo and Di Cristina until the arrival of Mr. Scalzo, in the meantime the affairs must be transacted in my name only, which is nearly sure that it will so continue.

I enclose two letters of credit amounting to £st 500, &c., &c.

659 During my short sojourn in Sicily I came to the knowledge that one of my partners did not enjoy good fame and not wishing absolutely that my name should be mingled with people who are not of immaculate respectability I decided to dissolve, and therefore the affairs are continued in my name only.

Awaiting your further favors, I have the pleasure of saluting you.

(EXHIBIT "P 2.")

Pages 37, 38. Translation.

NEW ORLEANS *October* 10*th* 1884.

Mrs. G. Di Cristina, Palermo.

I confirm my previous 7th inst. and acknowledge receipt of your telegram which asks for £st 400 for a steamer in port, and lately confirm my telegram in answer "Depravity Baorich Ratassa," viz will write particulars, and now send you a credit for £st 1,000.

660 Mr. Randazzo not only don't want come forward with money, but absolutely don't approve of giving cash money, and the only motive he has is that he claims from you $3,700 or £st 750 which added to the £st 250 that I gave you in Palermo form £st 1,000, cash, consequently neither he nor I can understand why so much cash is needed especially at a time that I don't think there is many boxes.

Anyhow if the firm continues Jos. Oteri & Co. why can't you trust your son and brother-in-law.

Then there is another reason, Does it pay to give cash for advances? If calculating the interest on the money, commission to the agent and other expenses, would be working simply for glory, which surely would not pay for the risk of trusting amounts without any security, while in Sicily and you among the others without money don't seem disposed to spend nothing.

Mess. Randazzo & Di Cristina having failed to contribute their share of capital, the affairs for the present at least must be transacted only in my name and on the arrival of Mr. Scalzo and Di Cristina you will receive more certain depositions.

I repeat to you that although that continuing the affairs alone, I desire to continue operations with you, and beg to persuade you that in all this I am not at fault, and you will find proper that I do not want partners without money, as of this kind are never short.

661 With the hope of doing a great deal with you this season, I salute you &c.

(Signed) JOSEPH OTERI.

(EXHIBIT "P 3.")

Page 77. 14 NOVEMBER 4.

Signori R. Filiberto & Co., Palermo.

We confirm our last 30th last month and acknowledge receipt of your favor 9th ult; taking full notice of contents.

The above confirmed letter and also previous ones were addressed you only in the name of our Mr. Oteri, who thought of dissolving from his partners, and now having all arranged, as before agreed our firm will continue under the same style of Joseph Oteri & Co., composed of the same partners as you learned by our circular.

(Signed) JOSEPH OTERI & CO.

(EXHIBIT "P 4.")

662 Page 71. 14 NOVEMBER, '4.

Sigr. Gaetano Di Cristina, Palermo:

We confirm our last 10th ult., and are possessors of your various favors. The letters 1st, 7th, 13th, & 25th last have been duly considered and before all we have the pleasure of informing you that Mr. Randazzo having established everything, by paying the balance his share of capital, of $2,500 in full for the $5,000, our business will continue under the same style of Joseph Oteri & Co., composed of the partners whom you well know.

One by one we will answer your letters and you will excuse us for not sending you the sum you asked, for the reason that Mr. Randazzo could not in due time settle his share due.

But not even now can you have any money, as much is needed here for letters of credit, to obtain which we must deposit cash.

Through Mr. Scalzo we received the receipt for £st 246 16 0 as money advanced you there and for which we hold responsible Mr. Randazzo. Said receipt is in due form. To keep you deprived of sums, is not our fault but an established understanding that we should not advance money to anybody.

&c., &c., of no consequence in this case.

663 (Exhibit "P. 5.")

Page 74. 14 NOVEMBER, '4.

Sigr. S. Gioe, Palermo:

We confirm our last 17th last m. directed to you by our Mr. Joseph Oteri, and without any of your favors to answer we write the present with the sole scope of informing you that on arrival of Mr. Scalzo and Di Christina we have arranged everything respecting our firm, leaving the business continue under the same style of Jos. Oteri & Co., composed of the same partners as announced in our circular.

Awaiting your favors &c.

(Signed) JOSEPH OTERI & CO.

(Exhibit "P 6.")

Letter of Credit for £St. 500.

Page 4.

Mess. R. Filiberto & Co., Palermo :

With the present beg you to take notice that I have opened
664 for you a credit for five hundred pounds, sterling on Lazard Freres & Co. of London, for merchandise to be shipped to my house.

Your drafts at 90 days date must be accompanied as usual, with bill of lading to order, with endors-ment in blank, insurance policy, consular invoice and certificate of insurance.

Without further but the pleasure of serving you.

Same to Andrea Pirandello
" " Baller & Co.
" " M. Costarelli & Co.
" " G. C. Hirzel
" " Letterio Parro
And others.

(Exhibit " P 7.")

Settlement Made by Joseph Oteri & Co., Through their Attorney at Palermo.

Salv. Gioe	£st.	2,000	cash		
		2,500	1 year		
		2,500	2 years		
		2,500	3 years		
		500	cash		
				10,000	
665 Di Cristina, Gaet.		255	1 year		
		255	2 years		
		255	3 years		
		255	4 years		
		255	5 years		
				1,275 5 25 2	
					£st. 11,275
Travelling expense to attorney				500	
Cash expense to attorney				100	
Commission expense to attorney (Di Cristina's notes)				1,275	
					1,775
Balance £st.					9,500

C. 5.25.

Cash received, draft on Cusimano, £st. 2,000, C. 5.25	380 95
Sent to att'y, 500 liras, C.	97 56
Cables	4 85

(Exhibit " B 1.")

666 EXHIBIT "O 2."

CONSULATE OF THE UNITED STATES,
PALERMO, ITALY. *August 24th* 1886.

SIR:—Upon the receipt of your letter on the 13th instant, I at once communicated with the chief of police of this city on the subject thereof, and I now enclose herein a translation of his reply, dated the 21st instant, from which it will be seen that Randazzo was convicted and sentenced to prison for a period of 15 years, on account of a certain crime, but escaped and was soon after pardoned by certain authority at Messina and in May of this year by the court of assize of Palermo.

I am sir your obedient servant.

(Signed) PHILIP CARROLL. *Consul.*

EXHIBIT "O 1."

Translation.

Cabinet of the chief of police.

PALERMO *August 21st* 1886.

The honorable consul of the United States Palermo

667 Reply to your note of 13th inst.

SIR:—Randazzo Ignazio son of Antonio of Palermo, was sentenced by the court of assizes on April 22nd 1885, to 15 years hard labor and five years police supervision, having attempted to commit an extortion on and seizure of Baron Bordonaro on the 28th January 1863 in Piana dei Colli (Palermo).

After such sentence and on the 30th May 1865, Randazzo was sent to the convict prison of St. Salvatore at Messina whence, during the night of 18–19 June, same year, he escaped with 22 other convicts and managed to embark on a vessel bound to America.

The chamber of council of the tribunal of Messina, issued a decree dated 12th July 1886, stating that no further proceedings were to be taken against him, and finally the court of assezes of Palermo, which had previously imposed the sentence, on the 14th of May of this year, in accordance with article 138 of our law, concluded that the order of arrest should be revoked and set Randazzo free from any further proceedings.

The above is in rep-y to your enquiry as at margin,

668 I have the honor to be, sir.

(Signed) TAGLIERI
Chief of Police.

Filed 4th March 1887.

669 U. S. Circuit Court.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Testimony taken by consent, on behalf of defendant, at the office of Mr. W. S. Benedict, No. 29 Camp St., on Monday, May 17th, Wednesday, May 19th, and Friday, May 21st, 1886, at 3 p. m.

Present: Mr. W. S. Benedict, for plaintiffs.
" Jos. P. Hornor, " defendant.

Testimony of Mr. Joseph Oteri, page —.
Direct examination, page 670.
Redirect examination, page 795.
Cross-examination, " 709.
Exhibits "A 1 & 2," page 708.
" "B 1 & B 2," " 747.
" "C 1 & C 2," " 749.
" "D 1," " 767.
670 Exhibits " D 2," page 768.
" "E 1 & E 2," page 769.
Exhibits "F 1 & F 2," page 773.
" "G," " 775.
" "I," " 771.
" "N, O, & P," " 795.
" "L," " 795.

Mr. JOSEPH OTERI, sworn for defendant, says:

By Mr. HORNOR:

Q. Mr. Oteri, you are the defendant in this case?
A. Yes, sir.
Q. You know Mr. Scalzo and the other plaintiffs in this case?
A. Yes, sir.
Q. They were your partners under the firm name of Joseph Oteri & Co. under act, before James Fahey, notary, of 24th June, 1884?
A. Yes, sir.
Q. I want you to state everything that took place from the time of the organization of that copartnership up to the time of bringing this suit.

671 A. After this copartnership was formed it was agreed among us that we should take a trip to Europe to solicit consignments for our business, for which we all agreed together, Mr. Scalzo, Mr. A. A. di Cristina, Mr. Hector Terni, and myself.
Q. Who was this Hector Terni?
A. This Hector Terni was employed by the firm as corresponding clerk and book-keeper of the firm of Joseph Oteri & Co. His compensation was sixty dollars per month and eight per cent. of the net profits of the earnings of the firm. As he was well posted in this business from his previous transactions while he was employed by Mess. A. Cusimano & Co., and through his thorough experi-

ence in this business, we employed and allowed him sixty dollars and eight per cent. interest of the net profits of the earnings of said firm of Joseph Oteri & Co. Before leaving the city I proposed to my partners that in undertaking a trip of this kind there was some funds needed. To this Mr. I. Randazzo told me: Mr. Oteri, I haven't the available money at present; if you can only advance it to me I will give you security; or something to that effect. I said: Mr. Randazzo, I will let you have twenty-five hundred dollars providing you will give me a first mortgage on your property, for which he consented, and we went to James Fahey's office and drew up the necessary documents, and I gave him a check for twenty-five hundred dollars, for which he returned it back to me for a part share of his advances in this copart-
672 nership. Well, that was settled. Then came the question of Mr. Scalzo. After the firm was organized Scalzo left for St. Louis to attend to his business. He told me before he left: Mr. Oteri, as soon as you come to St. Louis I will have the money ready for you. I said all right. I don't remember the dates. We left here on a Saturday evening. Mr. I. Randazzo accompanied us as far as St. Louis, as he had a branch house in St. Louis. Mr. I. Randazzo, Mr. Di Christina, Mr. Rector Terni, and myself arriving in St. Louis, Mr. Scalzo received us, welcomed us to his house, invited us to his house. We had a big dinner there. Well, we we were detained a couple of days in St. Louis. During that detention Mr. Scalzo gave me his check for two thousand dollars, payable to himself. I told him: Mr. Scalzo, that check won't do. I want a check payable to Joseph Oteri; to which it was corrected, making it payable to Joseph Oteri. As I had assumed all the expenses of the trip, Mr. Scalzo wrote on to an agent of the Italian steamship line in New York securing passage for us, and naturally, of course, he did so to reduce the regular fare to save some money. After that was secured we left. The four of us together went on to New York. Arriving in New York, the four tickets were there presented to us, and I gave a check or money (I disremember) for the amount of four first-class tickets. I disremember the steamship.

Q. Who did you give the check to?

A. To the agent of the steamship.

Q. How much was it for?

673 A. One hundred and ten dollars each. Meanwhile, while we were there, on that same day myself and Terni called on Mess. Phelps, Bros. & Co., of New York. I was introduced to Mr. Charlie Phelps by an old man, W. D. Clark. I informed him of our movements—of our enterprise.

Q. Where was this?

A. In New York (Mr. Phelps naturally).

By Mr. BENEDICT:

Q. Leave out Mr. Phelps.

By Mr. HORNOR:

Q. Were you with Mr. Scalzo at that time?

A. Not at that time.

Q. You don't know what took place at that time?

A. No, sir.

Q. Just state what you know of your own knowledge.

A. After being advised by Mr. Phelps to take two of us by way of Liverpool, naturally we had two of these tickets taken back by the agent and got our money back. After I got our money back for these two tickets I got two tickets by another steamer via Liverpool.

Q. How much did you pay for those?

A. Ninety dollars each. We went to Liverpool—myself and Hector Terni.

Q. Where did the others go to?

A. Directly to Sicily. Arriving at Liverpool, I solicited
674 consignments of one steamer of Mess. Phelps & Co. to be consigned to Joseph Oteri & Co. and half that line was consigned to Mess. Cussimano & Co., and they promised to give us one steamer every month.

Q. To your firm?

A. Yes, sir. With that promise I went on to Sicily by way of Malta. Arriving in Malta, we embarked on the steamer Ætna. From Malta we went on to Palermo. Arriving in Palermo, we went and called on our proposed agent, Mr. G. Di Christina.

Q. Was does G. stand for?

A. Gaetano.

Q. Is he not a relative of your partner?

A. Yes, sir; he is a brother-in-law of one of my partners, Mr. I. Randazzo. Arriving there, we spoke the matter over with Mr. Di Cristina. We told him of our movements and future intentions, and that we expected to appoint him our agent, as it was the will of our partners.

Q. Who was with you at that time?

A. Mr. Terni. Mr. Di Cristina commenced complaining and said that money was scarce.

Q. That was G. Di Cristina?

A. Yes, sir. I told him that we did not come here to advance any money; we came to solicit consignments.

Q. On commission?

A. Yes, sir; I told him if there were letters of credit to be
675 issued hereafter we would do the same thing as others did. We didn't expect favors from anybody. Says he, Mr. Oteri, I would like to have some money to engage some orchards of lemons and oranges. Says I, Mr. Di Christina, our agreement was, before leaving New Orleans, to advance money to no one. We will give you letters of credit, so that you can draw with bill attached. Says I, Mr. Di Christina, it is impossible to talk about money. Then says he, It cannot be possible that I should do business without any money. Says I, Let me tell you what I was authorized to

do before leaving New Orleans. Your brother-in-law, Mr. Randazzo, told me to let you have all you wanted to a certain limit. Says I, He told me that I could let you have as much as two thousand dollars, but I cannot let you have that much. If I had it I would let you have it, but I have only got about two hundred & fifty pounds sterling for the account of Mr. I. Randazzo. Says he, What will you do with the balance? Says I, Take my letters of credit for two thousand pounds sterling. As soon as I can draw money on those letters of credit I will give you the balance. I went around to the bank of Winslow, Sanlier & Co. I went around there, and I found out that the party who represented that bank was dead, and there was no one to represent that bank.

Q. How much did you give him?

A. Two hundred and fifty pounds sterling for account of Mr. I. Randazzo. After going around to different fruit shippers we called on Mr. Gioe.

676 Q. Who is we?

A. Myself and Mr. Hector Terni. Mr. Hector Terni was the guide and I was the one following him. Mr. Gioe told me, Mr. Oteri, I have heard of your good reputation. I have heard that you have accumulated a fortune. I have heard of your good name. Says he, Mr. Oteri, I will let you have one-half of my shipments. Says I, Mr. Gioe, anything that you can do I will appreciate. Says he, Furthermore, Mr. Oteri, I will not recognize any one of your firm but yourself. Says I, Mr. Gioe, that is something I am surprised at. Says he, No more than what I am. Says I, No matter; make your shipments and I will give you security the same as any other house in New Orleans. Says I, You can ship to me or to the firm. I will see that you will get entire satisfaction for whatever you ship to the firm or to me. I am the responsible person to the firm, and the firm is responsible to me. After that I went and called on different houses there, and they promised to ship oranges with letters of credit to my firm. From there we went to Messina, and at Messina we called on Baller Costerelli, Parandello, and several others, all fruit shippers, and, furthermore, a firm by the name of Banana. They were to have a great reception; invited me to dinner, &c. I remained there in Messina about forty hours. The following day all this courtesy and this smiling appearance towards me was changed the other way. I was ashamed of myself to walk around the streets, the cause of which I found out afterwards—that there were letters and cablegrams sent to Parandelli and Banana at Messina from here in New Orleans, copies of which I saw in the letter-press book, which letters were to the greatest injury of

677 the firm of J. Oteri & Co.

Q. Who were those letters and cablegrams from?

A. A. Cussimano & Co. I saw the copies in the letter-press book giving the standard of every partner of the firm. As to me, I was put down as a whore-house master, and the others, putting one down as a raper and——

Q. Which one?

A. Mr. V. Scalzo; and putting Mr. I. Randazzo down as a first-

class criminal, and putting Mr. Antonio Di Cristina down as a dude and good-for-nothing; I as a whore-house master. Well, naturally, a letter of that kind did not make any good effect. Of course, that put a damper to our prospects. After I saw that the thing was looking dark towards our prospects I hurried up myself and Mr. Terni to come back to the United States.

Q. Before you state you came back, state when you met Mr. Scalzo.

A. After leaving Messina we came back to Palermo, Terni and I, and there at Palermo Mr. Scalzo and Mr. Di Cristina came from quarantine, where they had been quarantined for fifteen days; and they asked us what we had done, and we told them that we had arranged everything satisfactory to the best of our ability.

Q. Did you tell them about those letters and cablegrams?

A. I didn't see them there; I saw them here in New Orleans.

Q. After you came back?

678 A. Yes, sir.

Q. Did you tell Mr. Randazzo & Antonio Di Cristina of what you had heard at Messina?

A. I told them here.

Q. You did not find out about these rumors until you came back here?

A. No, sir; at Palermo I told Mr. Scalzo that I had heard there was a little dissatisfaction existing in this country against our firm.

Q. That is all that you told him?

A. Yes, sir.

Q. Well, state what took place at Palermo between Mr. Scalzo and Mr. Di Cristina.

A. As soon as Mr. Antonio Di Cristina came to the hotel at Palermo, Mr. Hector Terni and myself were sitting in the hotel, and Mr. Scalzo and Mr. Di Cristina came there, and we all had a big laugh over Mr. Scalzo, as he was suffering from rheumatism. It so happened after -while Mr. Scalzo brought in his account of what he had expended at quarantine because they charged himself and our partner, Mr. Di Cristina, extra for living there.

Q. How much did it amount to?

A. About two hundred or two hundred and eighty liras, for which I paid him the amount in the presence of Mr. Hector Terni, myself, and young Di Cristina, and then Mr. Scalzo asked me to let him have a little more money so that he could go and spend a few days with his family at Milazzo, and I gave it to him.

Q. How much?

679 A. It was in the neighborhood of sixty dollars, American money.

Q. Did he return that amount to you?

A. When I came back to New Orleans it was charged up on the firm books to his account; and, after all that was done, we took a train and went to Catania.

Q. Who went?

A. Mr. Hector Terni and myself. Mr. Scalzo and young Di Cristina remained at Palermo. Mr. Di Cristina's father and mother

lived there. Mr. Scalzo remained there a few days at Palermo, and then I understood he had gone to Milazzo to see his relatives. I and Hector Terni went on to Catania, and at Catania we received a letter from Mr. Scalzo to wait there for him; that he would meet us there, and perhaps we would come to the United States together. I delayed there some time, but instead of coming with us Mr. Scalzo made up his mind to go back and spend a couple of weeks with his relatives, and Hector Terni and myself then waited for the steamer Ætna and came back.

Q. Did you do any business there in Catania?

A. No, sir; from Catania we went to Malta.

Q. Did you do any business in Malta?

A. No, sir; from Malta we went to London; from London to Liverpool, and from Liverpool we went to New York. Arriving in New York, I called on Mess. Phelps Bros. &. Co. with Mr. Hector Terni, and they told me they were sorry that they could not
680 stand by their promise to give us one steamer a month. They said that circumstances altered cases, which I found out indirectly, that there was some one of the firm did not enjoy a good character; that was the reason they disappointed us. Leaving New York, we arrived in New Orleans. Terni & I had to go to work and issue letters of credit to these shippers, as the season was far advanced. I only having two thousand to Mr. Scalzo's account, I said, Mr. Scalzo, you give me three thousand dollars to make up your five thousand dollars. And only having twenty-five hundred dollars to Mr. I. Randazzo's account, I said, You, Mr. Randazzo, give me twenty-five hundred dollars. I had to do this because I found out that there was very little money left after the expenses incurred for this trip to Europe to continue business and carry on business to a certain extent. I, of course, had to either to sacrifice the fruit of that season or get letters of credit issued to me in my individual name. I said, Gentlemen, if we delay, other parties will make arrangements before we will, and we will be left, and the expenses incurred on this trip will be a total loss, and they let me issue the letters of credit. I went around to the Union national bank here in New Orleans and saw Mr. Kohn, the president, and I told him that I wanted fifty-five thousand dollars' worth of letters of credit. Says I, The firm is Joseph Oteri & Co. Says he, I don't care what the firm is—the Bank of England recognises this bank, and I recognise you individually. Says I, Mr. Kohn, what shall I do in this business? Says he, Have you any collaterals?
681 Says I, I have premium bonds. Says he, You bring me ten thousand dollars' worth of premium bonds to make this *bona fide*. I went to the Louisiana national bank, where I had the bonds deposited, and brought them to Mr. Kohn and gave them to him for these letters of credit. Says I, Mr. Kohn, these letters should be in the name of J. Oteri & Co. Says he, Mr. Oteri, I only recognize you. I don't know anything about J. Oteri & Co. The Bank in England recognizes this bank, and we recognize you individually. To accompany these letters were circulars written in the same manner by Mr. Hector Terni, our book-keeper. This was done because the capital of

the balance due by my partners was not forthcoming, and it was done to gain time in our shipments for this season. When my partners came back in thirty or forty days I showed the letter book, and I said, Gentlemen, here is the letter book in which is copied the letter Mr. Terni has written. You know that I don't know how to read and write Italian. Says I, Here are letters of G. Di Cristina; here are letters of Parandelli.

Q. You showed them these letters?

A. Yes, sir; and they looked over them, as they knew how to read and write Italian.

Note.

Witness, being shown letter book, says that he showed all the letters from page 1 to page 70, inclusive, to Scalzo and Ran-
682 dazzo, and then showed them to Mr. Scalzo and Antonio Di Cristina, and they read them.

Q. You showed them all these letters?

A. Yes, sir.

Q. You cannot read Italian?

A. No, sir.

Q. You say these letters were written by Terni?

A. Yes, sir.

Q. And you showed them these letters all signed by you individually?

A. Yes, sir; and I explained why I did so, and they said, You have acted for the firm's interest—not to lose shipments, and to prevent loss, and to gain time. After they had read these letters I said, Gentlemen, you know that the conditions of our agreement was that five thousand dollars each should be deposited in my hands. Says I, Mr. Scalzo, you gave me two thousand dollars; I want three thousand dollars; and you, Mr. Randazzo, gave me twenty-five hundred dollars; I want twenty-five hundred dollars. Mr. Scalzo said, I am going up to St. Louis, and I will send it down to you in a few days; and Mr. Randazzo said he was a little embarrassed just at present. He said he had just bought some Louisiana oranges, and he wanted me to wait awhile. I said, Mr. Randazzo, if I don't see any money coming forward the best thing we can do is to quit, and I
683 waited nearly forty-five days, and they came up, Mr. Scalzo before Mr. Randazzo. Mr. Scalzo paid his three thousand dollars, and Mr. Randazzo paid his twenty-five hundred dollars. After that was done young Di Cristina and Hector Terni commenced writing to the parties that all the difficulties between Mr. Oteri, Mr. Scalzo, and Mr. Randazza had been amicably adjusted, and that the thing stood as it originally was, according to our circulars sent them, for which the letters are here.

Note.

Witness says that all the letters in the letter book from page 71 are written in the name of Joseph Oteri & Co., countermanding the

previous correspondence, because it was done for the best interest of the firm.

Q. So that thereafter everything that was done by you was for the interest of you partners?

A. Yes, sir.

Q. These letters are written by Terni?

A. Yes, sir.

Q. And Mr. G. Di Cristina?

A. Yes, sir.

Q. And Mr. Allessi?

A. Yes, sir.

Q. And who else?

A. Several others.

684 Q. And by other persons representing Oteri & Co.?

A. Yes, sir. After this was settled it went on in regular form, as usual.

Note.

Mr. Oteri shows the letter book to Mr. A. Berthoud (the interpreter), who translates the letter, on page 71, of Joseph Oteri & Co.

14TH NOVEMBER, 1884.

" Mr. Gaetano Di Cristina, Palermo.

Confirming our letter of the 10th ult, we are in possession of series of your letters to which we now respond: Said letters of the 1st, 7th, 13th, 24th, and 25th of last month have been duly considered. And before anything else, we have the pleasure of informing you that with our Mr. Randazzo, we have established everything, paying us at last his portion of twenty-five hundred dollars in settlement of the five thousand dollars. Our affairs will continue under the same firm style of Joseph Oteri & Co., composed of the partners of whom you well know. Little by little, we will answer all your letters, and you will excuse us if we do not send you the amount which you requested us, for the reason that Mr. Randazzo could not in due time regulate his portion, which he ought to have paid, however you cannot even now have money, because here we need a good deal of it for letters of credit, we having to deposit money here

685 for them. By means of Mr. V. Scalzo, we received a receipt of two hundred and forty-six pounds, sixteen shillings, which amount was advanced to you there in Palermo, and for which we hold here responsible, our Mr. I. Randazzo. Said receipt is perfectly correct. Keeping you without money is not our fault but a matter arranged that we should send no money to any one in advance. In order to giving protection to lines of steamers, we now beg to inform you that we are in a position to tell you that having spoken on the subject with our Mr. Randazzo and Mr. Di Cristina and Mr. Scalzo, we have come to the conclusion to protect the line of the Societa Agrumaria of Palermo, whose steamers will come consigned to J. Oteri & Co., and not to Randazzo and Di Cristina only. We will expect it from them, and our said partners will take

charge of them for their own account. You will so inform the Societa Agrumaria, or the president Mr. Salvadore Pugulissi, that we will protect their steamers with boxes to our consignments, provided the societa will send us a greater number of steamers than to others—more steamers consigned to us than to others here. We regret exceedingly, that you could not ship what you had in store, and we hope by next steamer to receive something good. Regarding the letter which authorizes you to write us in Palermo, and to obligate ourselves to give you (something that the translator cannot make out), we will send to you as soon as possible. In the hopes of your letters, and of good shipments from you, we remain, &c.,

"(Signed) JOSEPH OTERI & CO."

686 By Mr. HORNOR:

Q. Now, what took place after you had written these letters?

A. After I had written these letters—of course that was after the money was paid up by my partners the letters were written—everything was amicably adjusted, and we continued doing business. It so happened at that season the fruit was selling mighty low. It was a disastrous season. The advances made by us on our boxes of fruit were from four to eight liras a box, plus freight and duty, which brought them up in the neighborhood of a dollar and a half to a dollar and eighty cents, landed here in this market, per box. Furthermore, the fruit was arriving in bad order, and Mr. Onorato, the auctioneer, could not do otherwise than sell it for the best available American prices. I saw that our capital, instead of remaining here in New Orleans, was going away, and I commenced to feel a little uneasy about —. In the meanwhile I expected large shipments of fruit from a firm in Palermo, from a firm called Filiberto & Co., and meanwhile there were drafts in the neighborhood of nine thousand dollars presented to me as the senior of the firm of Oteri & Co. by the cashier of the Union national bank.

Q. Drawn by whom?

A. By the shippers, Filiberto & Co., on documents, as is customary. I having about twenty-eight hundred dollars cash on hand, in the neighborhood of three thousand dollars cash in
687 the bank to the credit of the firm of Joseph Oteri & Co., and about eighteen hundred dollars available money due to the firm on thirty-day papers, I was puzzled. I could not tell exactly how I could meet these drafts. I went to work and wrote to my partners, Mr. Randazzo and Mr. Scalzo, for which I had these letters registered.

Q. Were those letters copied in this letter book?

A. Yes, sir; I wrote them asking them to let me have at least fifteen hundred dollars more than was agreed on and I would put up the same amount, so that I could meet my obligations and these drafts. To this they didn't make any reply. I was then at a loss to know what to do. On the strength of that I went and wrote a letter to Mr. Ben. Onorato, requesting him to please sell all consignments to Joseph Oteri & Co.; of all the fruits on the steamship Irthington. I says, Please sell all fruits consigned to Joseph Oteri & Co. for cash,

to everybody without exception, as I needed funds to pay our obligations. This Mr. Onorato did; but it so happened that Mr. Onorato had about four or five thousand boxes of lemons and oranges from A. K. Miller & Co., shipped for to be sold in the same way. A. K. Miller had turned that fruit over to Mr. Onorato to sell it for them, the same as I had done. Meanwhile the vessel arrived, and on the day of sale Mr. John Zucca asked me if he could buy fruit from our consignment on thirty days' time. To this I told him, as I needed funds to meet my obligations, I could not sell on thirty days'
688 time. The next day Mr. Zucca came to me, and says he, Mr. Oteri, I have bought some of your goods. Says I, Mr. Zucca, the auctioneer has got my instructions what to do. Well, says he, Mr. Oteri, I have bought several hundred boxes of fruit consigned to your firm. The only way I can do is to give you a draft on the parties I bought for. Then I says, Mr. Zucca, will you let me have the drafts in the morning? Says he, Mr. Oteri, I will let you have them in the morning. Says I, All right. I went to the office after I left Mr. Zucca, and while I was there, who comes in—Mr. Onorato came in——

Q. At your office?

A. At C. A. Fish & Co.—Mr. Onorato came in there and told me, Mr. Oteri—he told me in the presence of Mr. W. D. Clarke, Mr. Louis Del'Orto, and Mr. C. A. Fish—says he, Mr. Oteri, what are you going to do about these goods that Mr. John Zucca bought at the auction? Says I, Ben., you have got my written instructions. Joe, says he, I delivered the goods that I sold for A. K. Miller, of some four or five thousand boxes, to Mr. Zucca and I am not at all uneasy. Says I, Ben., I need money to pay our obligations. Says he, Joe, it will be all right; says he, I will pay the bills, provided you will discount them at one per cent.; says he, I am not a bit oneasy about letting Mr. Zucca have the fruit. All at once Mr. W. D. Clark and Mr. Louis Del'Orto says, Joe, why don't you let him have the fruit; you will get the money. Says I, Ben., as you encourage me so much you may let him have them. Mr. Zucca promised the next
689 day he would let me have a check or draft on the parties he bought for.

Q. Did you consult with those parties that were there in regard to Mr. Zucca's solvency?

A. He was indebted to Mr. Clarke——

Q. Did they tell you he was good?

A. Yes, sir.

Q. All three of them?

A. Yes, sir; he owed Mr. Onorato for a big lot at that time.

Q. So, then, you let Mr. Zucca have the goods?

A. Yes, sir; thinking, of course, that in good faith he would give me the money the next day.

Q. Did he?

A. No, sir.

Q. What happened then?

A. He offered me his thirty-day note. This I refused to accept

for ten or fourteen days, expecting I would get the money out of him, and then finally I accepted his thirty-day note.

Q. At thirty days' date?

A. Yes, sir; this note was given to the firm of Joseph Oteri & Co., as the goods were sold in the name of the firm of Joseph Oteri & Co.

Q. They were Joseph Oteri & Co.'s goods?

A. Yes, sir. Well, the note was given. Mr. Zucca asked
690 for an extension, for which he afterwards applied.

Q. By proceedings in court?

A. Yes, sir.

Q. Did you vote for it?

A. Yes, sir; thirteen creditors voted before I did. I was the fourteenth to vote in his favor the same as the other creditors to give him a respite. There was only two who did not vote.

Q. And finally he went into bankruptcy?

A. Yes, sir.

The taking of testimony was continued until Wednesday, May 19th, at 3 p. m.

NEW ORLEANS, *May 19th*, 1886.

The further taking of testimony was this day resumed.

Present: Mr. W. S. Benedict, for plaintiffs; Mr. Joseph P. Hornor, for defendant.

Mr. JOSEPH OTERI, recalled, says:

691 A. While in Sicily I was informed by different parties that I was connected with an escaped convict, and that if he would be brought back to Sicily he would be hung. Meanwhile I went around the following day trying to solicit shipments of fruit to our consignments. The fact of that knowledge of theirs concerning one of my partners' character was so great that they didn't even speak to me. They ignored me in every respect. I then thought it best to leave Sicily and come back to the States. Before leaving Sicily Mr. Scalzo and Mr. Di Cristina arrived from their quarantine detention. They came to the Hotel de France and complained to me about the quarantine detention. Meanwhile he asked me and Terni what we had done in the business matter we had undertaken. I told Mr. Scalzo and Mr. Antonio Di Cristina everything was effected to the best of our ability, and that the only way we could get consignments was by issuing letters of credit, and that I was extremely disgusted of this trip and as I was informed of some very severe accusations against some of my partners. Then Mr. Scalzo told me—that is, he gave me a memoranda of what expenses he had incurred at quarantine between himself and Mr. Antonio Di Cristina, and I immediately paid over to him in full all he demanded, as per his memoranda book shown to me. He then, before Terni and I left Sicily, told me to let him have some more money. I don't remember how much it was, but it was all I could spare. Mr. Scalzo then

told me he was going to Milazzo to see his relatives and I
692 told him I was going with Terni to Messina; from Messina I would go to the States. We departed that next day—Terni and I—and we went on to Messina. Arriving at Messina, we were very well welcomed the first day and on the second day they all shut down and showed a cold face towards us. Naturally I imagined the cause, and to convince myself I made inquiries why this coldness towards us was shown and I was informed by certain parties the same thing that I was informed in Palermo about my partner, Mr. I Randazzo—that he was an escaped convict and under sentence to be hung. I naturally thought that Sicily was too much for me and on the following day I was about leaving—Terni and myself—when Mr. Scalzo arrived at Messina and he came and met us there at the hotel at Messina and he told myself and Terni to go on to Catania and wait for him there. We went to Catania; stayed there a day or two, and the following day or so afterwards Mr. Scalzo came there and we had a little fun there—at Catania—for about twenty-four hours. He then told me that he was going back to Milazzo to see his brother, and Terni and I left that same evening. We took the steamer Ætna and went on to Malta. From Malta we embarked on the P. & O. line of steamers and went to London. From London we took the train and went to Liverpool. Arriving in Liverpool, I and Terni (I am always with Terni), we went at Mess. Phelps Bros.' office and made a report to them that all our encouragements for future shipments were
so flattering that we were promised by every shipper
693 that they were going to ship fruit by large lots, and as Mess. Phelps Bros. & Co. had promised us a consignment of a steamer once a month, I approached them on that subject. I asked Mr. Phelps, Is your promise good that you made us before we went to Sicily? He immediately told me, Mr. Oteri, I am sorry, but it is impossible for me to keep my promise, as circumstances altered cases. I did not want to question him any longer, as I did not deem it proper, and so we left that same evening by the steamer Alaska for New York. Arriving at New York, Mr. Terni and I went and saw the branch house of Mess. Phelps Bros. & Co. and explained the great disappointment we had incurred through their house in Liverpool, and as one of the head clerks of the firm called me aside, said he, Mr. Oteri, it is through information received concerning one of your partners, Mr. Randazzo, that Mess. Phelps Bros. & Co. have gone back on their promise. Says I, That is the same thing I had heard in Sicily. I then left New York for home (New Orleans). Arriving at home the following day, I went to the Union national bank and told Mr. Kohn, the president of the bank, that we wanted some letters of credit issued in favor of different shippers of fruit in Sicily. I asked him if there was any security required. He asked me if I had any collaterals to bring them. On the next day I brought him ten thousand dollars' worth of premium bonds, and he placed all the bonds in the vault, and then I gave him a list of the names to whom we wanted letters of credit for. He told me to

come back the next day and get the memoranda. The letters
694 of credit amounted to forty-five thousand dollars. The different parties having been informed of these damaging reports in Sicily, and to try and make up a part of the travelling expenses among four of us, I deemed it proper to issue letters of credit in favor of these parties. Furthermore, I did so for self-protection. I did so in my individual name—that is, issued by Joseph Oteri. Mr. Kohn told me it matters not how I wished them issued, that he held me responsible, and naturally the bank in England held Union national bank responsible. I did this to make up a part of our expenses incurred in this travelling that we made. Meanwhile there was an advice from Sicily that a shipment of oranges and lemons had been made by the steamship Jason. The shipment was made by Mr. P. Scalzo, of Milazzo; he is a brother of my partner Mr. V. Scalzo. This shipment of oranges and lemons was made some time in October, I believe, but I am not certain. Meanwhile, about the time the shipment was due, Mr. Scalzo and Mr. Antonio Di Cristina arrived from their trip and they came at the office. Mr. Randazzo happened to be there, to- —he came there—the four of us were there together, and also Mr. Hector Terni, which made five of us there. Well, naturally Mr. Scalzo reported what expenses he had incurred in paying expenses for himself and Mr. Antonio Di Cristina and other expenses, and I immediately refunded him the amount he claimed.

Q. How much was it?

A. I couldn't tell the amount he claimed. Having done so, he told me that there was an arrangement made between him-
695 self, Mr. Fazio, and Mr. P. Scalzo (his brother), of Milazzo, that they had formed a copartnership between themselves to speculate in buying and shipping oranges and lemons to the States, and then Mr. Scalzo asked me and Mr. Randazzo and young Di Cristina if we would take one-quarter interest in that enterprise. I objected to it immediately; so did Mr. Randazzo and Mr. Di Cristina. I told him that we organized this copartnership solely to do a commission business and nothing else. I told him that we did not want to speculate. I was doing a commission business. He then told me to let him have a thousand dollars, so that he could send it to his brother for his share of the capital of this copartnership formed at Milazzo. Says I, Mr. Scalzo, as you have not paid the balance of your capital share I cannot let you have this thousand dollars. Then he answered me he was going up to Saint Louis, and he would bring me down the three thousand dollars and also this one thousand dollars. Says he to me, Mr. Oteri, you let me have this thousand dollars, and if I don't send you down the four thousand dollars I will bring you down the balance to meet my share of the capital. Says I, All right, Mr. Scalzo. The next day he left for St. Louis, and some time after he returned and brought me a check for the three thousand dollars. I then asked him for the thousand dollars. He told me to send to A. Fazio for his share and then to charge it to him, for which Mr. Terni did. Meanwhile the first shipment of fruit arrived per steamer Jason and we had the

fruit sold at auction. The lemons sold readily, but the
696 oranges, being very small and very sour, were withdrawn, as there was no offer made for them. It so happened that a week after Mr. Scalzo went to St. Louis and came back. Says he, Here is the thousand dollars. You send it to my brother's firm at Milazzo and I will send it back to you. This was told me in the presence of all my partners—in the presence of all concerned. I then, on the following day, went to the Union national bank and had two hundred pounds *pounds* sterling, sight draft, at the Union national bank drawn in favor of Joseph Oteri & Co., and endorsed it over to V. Scalzo.

Q. Is this it?

(Witness looks at the draft marked "D 1.")

A. Yes, sir; I gave him this draft, and in his presence and in the presence of the balance of the firm I told Mr. Terni to write to Mr. Fazio or one of the firm he had organized up there and tell them that this was his share of capital stock of the firm that had been organized in Milazzo. Mr. Scalzo wanted the Bank of Barcelona to hold itself responsible for any deficiencies on the result of these shipments that they would make if the fruits would realize less than the amount they would advance, as this bank at Barcelona had a letter of credit issued by Joseph Oteri & Co. for their shipments.

Q. Was that thousand dollars charged to Mr. Scalzo's account?

A. Yes, sir; besides other little amounts that he left due
697 the firm for little advances given to him in Sicily; the other little amounts the book reads for itself. After this was effected the steamer Jason arrived. Aboard of this steamer there were some six hundred and odd boxes, between lemons and oranges, consigned to P. Scalzo and endorsed over to Joseph Oteri & Co. This shipment at that season of the year, naturally the lemons sold readily, but the oranges were a drug, as they were very small and as sour as gall. Mr. Scalzo happened to be in town, and to protect the interests of his brother he suggested that he should take the oranges to St. Louis and there sell them to the best advantage, to which we consented to do. It was, of course, a brotherly feeling that he should do it. Afterwards we commenced receiving shipments of fruits, the shippers drawing on us with documents attached, but as the season was very poor to realize any big prices the fruit was always selling low, and we could not realize as much as our advances, duty and freight included. It got so that our capital was diminishing and the bulk of it was remaining in Sicily. Afterwards Mr. Scalzo sent us down a check for the sale of those oranges (that is, his St. Louis house sent it down) that he took to dispose of, and I instructed Mr. Terni to forward the account sales for those oranges to Mr. P. Scalzo, of Milazzo. Meanwhile we were receiving shipments of oranges & lemons from different parties on letters of credit. These shipments were received mostly in bad order, and the market prices being so broken up in prices that we hardly
698 realized the advances—that is, freight and duty included—that was charged up to the shippers, as per account sales

charged in the books. As I was taking notice of all this, that our capital was diminishing, and that instead of remaining here in our bank it was remaining in Sicily, I saw that the foundation was dropping out of it. I immediately got a little uneasy, and I thought there was no money in the business, and so one day I went to my partners, and said I, Gentlemen, here is the account for four of us for travelling expenses. Says I, Here is the amount I gave to Mr. G. Di Cristina for account of Mr. I. Randazzo; between that amount and other little amounts, $1,200.00, and also $1,250.00 that I took for my account; here is the amount I gave you, Mr. Scalzo, $1,000.00; I paid to Mr. Fazio for your account and other small amounts $250.00 for travelling expenses. Says I, At that rate, gentlemen, we cannot do business. Says I, If you wish to continue the business, you are satisfied to do business that way, so am I. Says I, Therefore I want at least fifteen hundred dollars from each of you; I will put in the same amount what the others will do. As we had advice of a large shipment of fruit from Palermo, and having freight and duty to pay on it, it will be between nine and ten thousand dollars, and, says I, there is no more than forty-six hundred dollars available cash or between cash or available notes. Says I, Gentlemen, I must have some money; otherwise we cannot continue this business. My partners asked me if I would not advance the money and charge eight per cent. interest, as I agreed to do in the arti-
699 cles of copartnership. To this I told them that I could not agree to do so. My partners then said, Well, you agreed to do so. Says I, Gentlemen, you are mistaken; if I deemed it proper I would do so. Says I, Gentlemen, this is my ultimatum. I want what I demand because it is needed. Of course, this only went in one ear and out the other. They didn't take any interest in it.

Q. Who didn't take any interest?

A. The partners.

Q. Who were your partners?

A. The same partners, Mr. Scalzo, Mr. Randazzo, and Mr. Di Christina, of course. Mr. Terni was our corresponding clerk and also book-keeper. When Mr. Terni saw that my partners acted that way he left the office and didn't come there any more. He thought sure the thing would go through then. Well, of course, I was at a loss to know what to do, not knowing how to read and write Italian and having so much accumulated correspondence on hand to be answered. I complained to my partners that we should have some Italian to do the correspondence for us and make entries in the books and account sales to the different fruit shippers. To this Mr. Randazzo proposed a man named Allessi. Says I, I am satisfied if you are. The following day Mr. Randazzo came with Mr. Allessi, saying that he was the man that was to be employed to attend to our correspondence and look over the letter book. This I
700 consented to by giving him charge of all the books; and then afterwards he commenced answering the different correspondence, and naturally I could not be there all the time to watch him. I used to be out and in, and while I was out and while I was in there he looked over the letter book and account book, and he saw

I had sent letters of credit to these parties in my own individual name, and that I had written letters to these parties in Sicily in my individual name informing them of the proposed dissolution of this firm of mine, as my partners did not come up to their duty in paying up their balance of capital; furthermore, as I was informed while in Sicily to the effect of the character of one of my partners, I was extremely anxious to quit this firm and do no more business with Sicily; furthermore, there happened to be a couple of pages missing from the letter book, for which I produced the original copies.

Q. Did you produce the original copies to them?

A. No, sir; not to them.

Q. You have produced the original in the taking of this testimony?

A. Yes, sir. It was a personal letter that I wrote for information received. All this naturally was reported to Mr. Scalzo and to Mr. Randazzo by Mr. Allessi, but Mr. A. Di Cristina, one of my partners, knew all the time the contents of that letter, and also the contents of every letter in the letter book, as he was most of the time looking over the book and doing office work the same as our ex-book-
701 keeper, Mr. Hector Terni, and he was aware and well informed of the contents of every letter in the letter book—more so than what I was or any other person, with the exception of Mr. Hector Terni, and he could read and write Italian.

Q. Didn't he write some of the letters in the letter book?

A. Yes, sir; over twenty or thirty. He made entries in the book, too. Of course, when my partners, Mr. Scalzo and Mr. Randazzo, saw that I was determined not to continue business that way any longer, and having these reports from Mr. Allessi concerning the books and the correspondence, they, of course, after receiving a registered letter from me making demand on them for fifteen hundred dollars, for which I first asked them for it verbally, and then afterwards I wrote them for it—there is a copy of it in the letter book—I told them that I wanted that money to help meet the obligation that was due very soon on this large shipment of fruit made from Palermo. They naturally ignored that letter. About two or three days afterwards who comes to the office—Mr. Scalzo, Mr. I. Randazzo, Mr. A. Di Cristina, Mr. Morana, Mr. Orlando, Mr. Di Cristina Huber, a relative of Mr. Randazzo. They came at the office, and Mr. Scalzo, as head spokesman, says, I want to see the books. I says, Here, gentlemen; here are the books. I took the letter book and I laid it on the desk and left them to read it. Mr. Scalzo told Mr. Allessi to look over the letter book. Of course I didn't
702 object to that, because they had as much right to the letter book as what I had; but after Mr. Scalzo told me, Mr. Oteri, I will take the letter book home and will bring it back in a few days, I said yes. I told them that I would let him do so with pleasure. I then sat down and wrote a receipt and read it to them: "Received, New Orleans, ——, 1884, from Joseph Oteri a letter book containing so many copied pages, the same to be returned to Joseph Oteri on demand." I then told them to sign this receipt. This

they objected to; and then Mr. Randazzo and Mr. Scalzo got a little excited, and said they would kill me if I would not give them their rights and their full share of the original capital. I saw they would not sign the receipt for the letter book, and so then I took the letter book and locked it up in the safe and went down-stairs. After this happened I took all the books and brought them to the office of Messrs. C. A. Fish & Co., and I asked Mr. Del'Orto if he would assist me to do a little Italian correspondence for me, as I had a good many unanswered letters to answer, and also asked Mr. Del'Orto if his book-keeper, Mr. Jos. Bein, could make up the account in the firm book and to straighten up the set of books, as they had not been worked at for quite awhile. Says I, I will pay him for his trouble. Mr. Del'Orto told Mr. Bein — could go to work and do so. I had nothing but Italian correspondence. Well, this went on smooth, and — was not molested for quite awhile, until this large shipment of fruit arrived. I wrote to the auctioneer, Mr. Onorato, stating, Mr. Onorato, take notice *that* all the fruit consigned to the firm of Joseph Oteri & Co. per steamer Irthington and another
703 steamer called the Edgar. Please sell them for cash to whoever it may be without exception, as I need funds to meet my obligations. I signed it Joseph Oteri & Co.

Q. Who was that letter written to?

A. To Mr. Ben. Onorato. After this was effected I, of course, thought that everything would be all right. It so happened the Irthington arrived, and I went at the auctioneer's office, on Royal street, and asked Mr. Onorato if he had received my note. He said yes. I said, I hope you will execute it to the full extent. I said, I want some money to meet my obligations. This he consented to do. Mr. Onorato says, I have got five thousand boxes of lemons turned over to me by A. K. Miller & Co., and Mr. Miller has instructed me to do the same thing with his fruit as I had done. It so happened that the next day the sale was to take place. Before the sale took place Mr. John Zucca approached Mr. Onorato of his intention of buying a certain amount of this fruit. Says Mr. Onorato, Mr. Zucca, this you cannot do. He said, Why? He said, Because Mr. Oteri has restricted me to sell all fruit consigned to this firm for cash. Mr. Zucca came and saw me afterwards and asked me if he could buy any fruit from our consignments. Says I, Mr. Zucca, I cannot let you have goods on credit because I need money to meet my obligations. Says he, Mr. Oteri, can't you let me have them on thirty days' time? Says I, Mr. Zucca, I cannot let you have them on thirty minutes' time. Says he, Mr. Oteri, I
704 will give you drafts on the parties I buy for. Then I said, Mr. Zucca, you can buy them provided you give me the drafts on the parties you buy for. Well, the next day the sale took place and Mr. Zucca bought somewhere in the neighborhood of twenty-three hundred dollars from consignments made to our firm. I immediately after the sale went to Mr. Zucca's office and tried to see him; he was not there. I went up to the fruit shed, on the fruit levee, and there they told me that Mr. Zucca had gone to his office, but before going to repeat the visit I went to my office, at Messrs.

C. A. Fish & Co., and there I sat down and commenced writing. While I was there Mr. Onorato came in the office and says, Mr. Oteri, what are you going to do about the fruit that Mr. John Zucca bought? Says I, Ben., you have got my written instructions. Says I, I haven't been able to see Mr. Zucca; he has promised to give me drafts on the parties he bought for. Says I, You have my orders. Says he, Joe, if you will let it stand there all night, as it is very cool, and attempt to have it resold again, you will lose about seventy-five cents per box; you will get seventy-five cents less per box. Furthermore, says he, Joe, I had five thousand boxes of lemons turned over to me by A. K. Miller, and I took the risk in letting him have all he bought. Furthermore, says he, Mr. Zucca owes me about eight thousand dollars.

Q. Besides that?

A. Yes, sir. Furthermore, says he, if you are uneasy and want to get your money, I will discount the bill if you will take off
705 one or five per cent.

Q. Do you know whether it was more than one or five per cent.?

A. I think it was one per cent. It was told to me in the presence of Mr. W. D. Clarke and Mr. C. A. Fish, I believe, and I believe Mr. Louis Del Orto. Through this encouragement of Mr. Onorato I told Mr. Onerato to let him have the goods, as he had promised me drafts on the parties he bought for. I gave him this order verbally. Mr. Onorato then went to work and telephoned his discharging clerk on the levee and told him to let Mr. Zucca have the fruit purchased the day previous. After that was done I went to Mr. Zucca's office to see if I could find Mr. Zucca. I found Mr. Zucca, and I said, Mr. Zucca, let me have the drafts that you promised me on the parties you bought for. Says he, Mr. Oteri, I have sent them to have them accepted. Says I, Mr. Zucca, our agreement was that you should give me the drafts on these parties that you bought for, and that I should send them up there for acceptance. Says he, Mr. Oteri, I forgot all about it. Says I, Mr. Zucca, it is wrong on your part to have mislead me. Says I, You have acted wrong and you have not stood by your promise. I then saw something wrong was to happen. Then afterwards he offered me his thirty days' note. This I refused for eight or nine days, and finally I had to take this thirty days' note, and when this note came due Mr. Zucca asked for an extension. He asked for a respite of two years. This I objected to, but as there was a meeting held at Mr. Onorato's office, and as Mr. V. Lucio and Mess. A. Cussimano
706 & Co. were the heaviest creditors, and several other larger creditors than my firm had signed this respite, I, of course, could not do otherwise than to do the same thing. After this was done he came and asked me to give up the thirty-day note. I said, No, sir; I keep this thirty-day note; but he said, You agreed to the respite. I said, No; I will keep this thirty-day note, and naturally, of course, I have got the note yet in my possession. After that was all done it so happened that a certain party by the name of Tenerro, who was an ex-clerk of Mess. A. Cussimano & Co.—it so happened

this party one day showed me a copy from a copy of the letter book in the office of Mess. A. Cussimano & Co. that had been written to different parties in Sicily, damaging the character of our firm. They were letters to the tone that our firm was composed—one as a criminal, the other as a raper, another one as a whore-house master, and the other as a foolish dude. Well, that was what I read with my eyes, and I asked him to let me have that copy, and he said, Oh, no; I can't give it; and that was the end of the celebrated case.

NOTE.—Mr. Joseph Oteri (witness) says that the previous testimony that he gave the other day is so mixed up that he has got the cart before the mule, and now I have stated them in their regular order.

By Mr. HORNOR:

707 Q. Who wrote that letter which was cut out of your letter book?

A. Mr. Hector Terni.

Q. Did he write it at your instance?

A. No, sir; it was his own judgment, and he read it to me and naturally I consented to it.

Q. Who was it signed by?

A. By myself.

Q. Individually?

A. Yes, sir.

Q. Not in your firm's name?

A. No, sir.

Q. Was it a private letter?

A. Yes, sir.

Q. Who cut that letter out of the book?

A. Mr. Hector Terni, as he had copied it in our letter book, and he said as it was a private letter he thought it should be cut out of the letter book.

Q. You didn't know that it was going to be cut out?

A. No, sir; I objected to it, and he gave me his reason for cutting it out.

Q. That is, because it is a private letter and of no concern to your partners?

A. Yes, sir.

708 By Mr. HORNOR: I offer in evidence the two letters marked "A 1 & A 2:"

ST LOUIS *Nov. 6th* 1884,

Mr Joseph Oteri New Orleans.

DEAR SIR: Yours of the 3rd inst to hands everything you mention well noted. I shall leave to come down either to-night, or to-morrow night, we shall then talk over the whole matter, and just as you say, those that pay up shall remain, and those that cannot pay withdraw paying of course their share of, expenses made. No

matter how it is, wait until I come down, and we shall see, how we must arrange everything.

Yours truly,

(Signed) V. SCALZO.
A.

"A 1."

ST LOUIS *Nov.* 1, 1884.

Mr Joseph Oteri, New Orleans.

I arrived here three days ago, and read your last letter. I shall be down in New Orleans in the latter part of next week, and shall arrange all matters satisfactory. I have to remain here
709 a few days, to settle a very important matter which cannot be settled without my presence.

You can expect me down Friday or Saturday next.

Yours truly,

(Signed) V. SCALZO.
A.

The further taking of testimony in this case was continued until Thursday, May 20th, 1886.

The further taking of testimony in this case resumed this Thursday, May 20th, 1886.

Present: Mr. W. S. Benedict, for plaintiffs; Mr. Jos. P. Hornor, for defendant.

Mr. JOSEPH OTERI recalled.

Cross-examination.

By Mr. BENEDICT:

Q. Mr. Oteri, how old are you?

A. I am a little over forty.

710 Q. How long have you been in business when you formed this copartnership with your partners?

A. One year.

Q. What business?

A. Jobbing; local fruit business.

Q. Had you ever been engaged in any business of importing fruit prior to that time?

A. No, sir.

Q. Had you ever done any foreign business with any of your partners or with anybody else?

A. I did for awhile.

Q. Did you import from Italy?

A. Yes, sir.

Q. Did the firm of Joseph Oteri & Co. ever import from Italy?

A. Yes, sir.

Q. Did you ever have any acquaintance with any parties in Italy personally?

A. No, sir.

Q. Have you ever conducted any correspondence with any parties

whilst in Italy whilst you were in business with your brother, Mr. S. Oteri?

A. Yes, sir; we corresponded with a man named G. Di
711 Cristina; that was a great many years ago. Mr. Di Cristina is the brother-in-law of my partner, Mr. I. Randazzo.

Q. Did your firm receive foreign fruits or foreign products on consignments from Mr. G. Di Cristina?

A. Yes, sir.

Q. How long ago was that?

A. About eight or ten years ago.

Q. Did you ever see Mr. G. Di Cristina?

A. Yes, sir; I saw him whilst on this trip.

Q. Had you ever seen him whilst you were in business with your brother?

A. No, sir.

Q. How was your business with Mr. G. Di Cristina; all satisfactory whilst you were a member of the house of S. Oteri & Bro.?

A. Yes, sir.

Q. So that you considered that you knew G. Di Cristina, in some degree?

A. Yes, sir. When I went to Italy in the interest of the firm of Joseph Oteri & Co. I knew Mr. Di Cristina from the previous transactions with the firm of S. Oteri & Bro.

Q. Where did you do business?

A. In Palermo.

Q. Did you call upon Mr. G. Di Cristina as soon as you arrived in Palermo?

A. Yes, sir.

Q. Did you introduce yourself as having been a member of the firm of S. Oteri & Bro.?

712 A. I introduced myself as being the senior member of the firm of Joseph Oteri & Co.

Q. Did you tell him that you had been a member of the firm of S. Oteri & Bro.?

A. No, sir.

Q. Did he know that fact?

A. I suppose so; I couldn't tell you, Mr. Benedict; he knew the name.

Q. Was any allusion made to it?

A. No, sir.

Q. Did he make any allusion to it?

A. No, sir.

Q. Then, simply on your representation of being the senior member of the house of Joseph Oteri & Co., you made negotiations for shipments?

A. Yes, sir; as he had previously received a circular of the firm of Joseph Oteri & Co. explaining all matters, and also he having received letters from his brother-in-law, Mr. I. Randazzo, and from his son that this firm was organized. His son is Antonio Di Cristina.

Q. What arrangements then did you make with Mr. G. Di Cristina?

A. Well, we appointed him our agent and we issued letters of credit in his behalf, and we agreed that he should ship all the fruit that he could, and that he would use his influence towards his friends in shipping our firm all the fruit they could.

Q. What agreement did you make as to compensation?

A. His compensation was the same as was customary—as
713 any other agent would charge.

Q. What was that?

A. I believe it is one — cent. for soliciting and one per cent. commission.

Q. That is two per cent.?

A. Yes, sir; one per cent. for soliciting and one per cent. for guaranteeing shipments in case there would be a lot of goods shipped and the goods would not realize the advance made on them.

Q. Then his profit was two per cent.?

A. Yes, sir; one per cent. for soliciting and one per cent. for guaranteeing the deficiency on regular shipments made. Our firm was charging five per cent.

Q. Then he was to have two per cent.—one per cent. in case he guaranteed loss on shipments and one per cent. when there was no guarantee of loss?

A. Yes, sir; one per cent. for any deficiency incurred through shipments.

Q. You mean that he was to get one per cent. for shipments?

A. Yes, sir.

Q. And one per cent. upon his guarantee of deficiency incurred through shipments?

A. Yes, sir.

Q. That was his sole compensation?

A. Yes, sir.

Q. Did you agree as to what quantity of shipments should be made per month, what number?

714 A. No, sir.

Q. Has he been engaged in that business for any length of time?

A. Yes, sir.

Q. Shipping to New Orleans?

A. Yes, sir; and other places.

Q. Was he the first man that you saw in connection with the business of Joseph Oteri & Co.?

A. Yes, sir.

Q. Who was the next man that you went to see after you had made that arrangement with him?

A. Mr. Filiberto.

Q. That is also at Palermo?

A. Yes, sir.

Q. Did you make your agreement with Mr. G. Di Cristina in writing?

A. No, sir.

Q. It was just verbal?
A. Yes, sir; verbal.
Q. How many shipments did you receive from G. Di Cristina?
A. I cannot remember. The letter book will show.
Q. What vessel did any of those shipments come on?
A. On different vessels.
Q. Name any one or more of them.
715 A. Well, different vessels. I disremember the names of them. The books will show.
Q. Now, what agreement did you make with Mr. Filiberto?
A. I made agreement that he would make us shipments, and that he would use his influence towards his friends in our behalf in getting us their shipments. On all shipments that he would secure for us he would get one per cent., and his own goods he would sell on commission.
Q. What amount of shipments did he agree to make?
A. There was no agreement made then in Palermo. The agreement was made here. We issued letters of credit at four liras a box.
Q. Did that agreement emanate from your partners and yourself after you had a conversation on the subject in New Orleans after your return from Europe?
A. It was suggested by Mr. Hector Terni, our book-keeper. As he was posted in the business, he suggested it was better to allow four liras a box.
Q. It was suggested by Mr. Terni?
A. Yes, sir.
Q. Was it agreed to by all of you?
A. Yes, sir.
Q. Was it agreed to after you returned from Europe?
A. No, sir.
Q. Before you went to Europe?
716 A. No, sir; after I issued the letters of credit.
Q. But it was after your partners returned from Europe that you issued the letters of credit?
A. Before they returned.
Q. So that as soon as your partners, Mr. Scalzo and Mr. Di Cristina, returned you then told them you had issued letters of credit at four liras a box?
A. Yes, sir.
Q. So you issued those letters of credit at that rate without consulting them?
A. Yes, sir.
Q. How much did you advance to G. Di Cristina?
A. Four liras.
Q. Four liras only?
A. Only.
Q. How many times did you make such advances?
A. Well, we issued a letter of credit for one thousand pounds, and he drew according to the shipments upon the letter of credit.

Q. How much did you advance Mr. G. Di Cristina upon each shipment of each cargo?

A. I don't remember; the books will tell you.

Q. Did you advance at any time more than four liras a
717 box? If so, how much, when, and where?

A. I didn't advance him any more than four liras, because he couldn't draw any more than that.

Q. You are positive of that?

A. Yes, sir.

Q. How much did you agree to advance Mr. Filiberto?

A. The same thing.

Q. That is, four liras a box?

A. Yes, sir.

Q. You did that also before your partners returned from Europe?

A. Yes, sir.

Q. What other engagements did you make with Filiberto?

A. Well, we had a lot of shell and paper almonds—that is, fancy almonds—that he offered to me at a very low price, and I thought that it was right that I should take them, as I could make a hundred dollars profit, and he furthermore offered me a 100 tons of brimstone. I believe I bought one hundred and fifty sacks of almonds—between paper almonds and shell almonds—at a very small price; also bought 100 tons brimstone.

Q. For yourself or for your firm?

A. For the firm, and some for Sterns Fertilizing Co., on which
718 we made some money on both.

Q. Did you pay for these things?

A. I gave them instructions to draw upon documents at London, with bills of lading and documents attached for the amount of the invoice.

Q. Did you open that letter of credit in London to draw against your name individually or in the name of the firm?

A. It was opened in the name of the firm.

Q. When did you do that?

A. Before leaving London, if I am not mistaken.

Q. Before leaving London on your return home?

A. Yes, sir.

Q. Did you make the necessary deposit in London for that purpose?

A. Yes, sir; I must have done so.

Q. Where did you do business in London—with what bank?

A. With a bank that has three names. I have forgotten the name of it.

Q. What credit did you open for the firm in the bank whose name you have forgotten?

A. For the full amount of the invoice of these almonds and brimstone, for which they gave myself and Mr. Hector Terni duplicate invoices.

Q. Who gave it to you?

A. Mr. Filiberto.

Q. For how much was the credit opened?

A. For the amount of that invoice.

Q. What was the amount of that invoice?

719 A. I don't remember.

Q. Why did you go to the expense and trouble of waiting until you got to London, when you had on hand drafts and bills of lading to pay for the invoices for goods you had purchased in Sicily?

A. Well, as I said before, the banker there was dead.

Q. What bank?

A. The bank representing Winslow, Sanlie & Co., and there was no one there to represent that bank, and this letter of credit of two thousand pounds was worthless in Palermo; and I told Filiberto as soon as I got to London I would deposit the money in a certain bank there and write him so that he could send his bills of lading with bills attached for their invoice.

Q. Was that the first advance on that letter of credit, the two thousand pounds to Filiberto?

A. That was the first. This letter of credit of two thousand pounds was my individual money that I took alone. I used that money for the benefit of the firm for paying for these almonds and brimstone.

Q. Did you use that money for any other purpose?

A. No, sir; there was another letter of credit, amounting to two thousand dollars, that was the two thousand dollars that Mr. Scalzo gave me, and I turned it into a letter of credit in New York. It was two thousand dollars aside from the two thousand dollars that I had.

Q. How much of the letter of credit of two thousand dollars

720 bought in New York with funds furnished you by Mr. V. Scalzo did you use for the benefit of the firm outside of travelling expenses?

A. I used all that for travelling expenses, and besides I had to draw more money by paying one-eight- per cent. interest on it. I believe I drew about two hundred dollars.

Q. In Malta you spent altogether twenty-two hundred dollars out of twelve thousand dollars, besides the goods that you bought from Filiberto?

A. Yes, sir.

Q. Now, you understand me thoroughly?

A. Yes, sir; I paid that two-thousand-dollars letter of credit, and I paid that invoice of Filiberto out of the large letter of credit.

Q. And then you spent about two hundred dollars more in Malta?

A. Yes, sir.

Q. And that was the total amount that you were out of pocket?

A. Yes, sir; and there was some money given to Mr. Scalzo, and there was some given to Mr. G. Di Cristina, in Palermo, out of the first two thousand dollars. Some went to Scalzo for expenses and some to G. Di Cristina for account of I. Randazzo, and the balance for hotel bills, for passage for railroad fares, steamship fares, &c.

Q. How much went to G. Di Cristina?

A. Two hundred and fifty pounds, less a little bill that he paid for a little dress that I bought for my neice.

Q. How much was that?

721 A. Fourteen, fifteen, or sixteen dollars. He paid for it and charged the difference.

Q. How much did you pay Mr. Scalzo?

A. His expenses.

Q. How much besides that did you give him?

A. I don't remember how much I gave him. I gave him all the expense he incurred at quarantine, and he asked me to let him have a little more money, that he wanted to go and see his relatives at Milazzo, and I believe I gave him sixty dollars.

Q. So the balance of that money you brought home?

A. As soon as I got to New York I drew some more money to pay for other passage from New York here and other little money that we needed—pocket money.

Q. How much did you draw in New York?

A. I don't remember.

Q. About?

A. I don't remember. I believe I have got a memoranda among the papers there (witness referring to the papers lying on the table connected with this case).

Q. When you came home what was the first thing that you done in connection with the firm?

A. The first thing I did was, I met Mr. Randazzo and he asked me how things were, and I told him that things did not look as they represented; that unless we issued letters of credit in

722 their behalf to make shipments we would not be able to get good consignments, as the season is pretty far advanced. Says I, Mr. Randazzo, you will be kind enough to let me have the twenty-five hundred dollars balance that you owe.

Q. I want to know what was the first thing that you done after you came home, not the first talk that you had with Mr. Randazzo.

A. I issued letters of credit to different parties, limiting the amount of what they could draw.

Q. Now, what other person in Palermo did you make arrangements with for shipments?

A. I made arrangements with a man by the name of Gioe.

Q. Did you see Gioe after you had seen Filiberto?

A. Yes, sir.

Q. On the same day?

A. I don't remember whether it was the same day or not. I saw him during the time I stayed in Palermo.

Q. How long had you been in Palermo before Mr. Scalzo came there?

A. Eight or ten days.

Q. Had you made all your arrangements there before he arrived?

A. Yes, sir.

Q. Now, tell me what your arrangements with Mr. Gioe were.

A. Well, Mr. Gioe, he is a man that has been shipping

723 always to one firm in this city; that's A. Cussimano & Co. There has been several fruit importers who tried to get his shipments. This man was a large shipper and we were anxious

to get his shipments, and for an inducement, for policy sake, we allowed him to draw on one letter of credit eight liras a box and on another letter of credit for five hundred pounds for four liras a box. We did that for policy sake to get his shipments.

Q. That is, you and Mr. Terni?

A. Yes, sir.

Q. He agreed, then, to ship to you?

A. Yes, sir.

Q. At eight liras a box?

A. Yes, sir.

Q. For what quantity of shipments?

A. All he could. He told us that he would divide the shipments between us and A. Cussimano & Co.

Q. Then one letter was to be given at five hundred dollars and to be drawn against at eight liras a box, and when exhausted another letter of credit at four liras for the same amount?

A. Yes, sir; he didn't exhaust the first letter of credit, and, therefore, did not draw against the second.

Q. How many shipments did you receive from him?

A. Three or four large shipments.

Q. How many shipments did you receive from Filiberto?

A. One very large shipment.

Q. Do you mean one or two?

A. One, of box fruit.

724 Q. And from Gioe three or four?

A. Yes, sir.

Q. And from G. Di Cristina?

A. Well, from G. Di Cristina we received four or five; I don't remember exactly, Mr. Benedict.

Q. Who else did you see in Palermo and contract to do business with?

A. Well, there was no other parties. There were several parties we afterwards issued letters of credit in their behalf, but they did not operate on them at all.

Q. Did you do any business with a man maned Hirzell, Jr.?

A. No, sir; we gave him a letter of credit.

Q. You gave him a letter of credit?

A. Yes, sir.

Q. Did he make any shipments?

A. No, sir; not to my knowledge.

Q. So there were three parties in Palermo that you did business with whilst you were there?

A. Yes, sir: three.

Q. Did G. Di Christina at any time send shipments to A. Cussimano & Co.?

A. I couldn't tell you. I don't know.

Q. Did Filiberto send any shipments to A. Cussimano & Co.?

A. Perhaps so. I couldn't tell you, Mr. Benedict.

Q. When was it and how long after you were in Palermo
725 that you heard anything concerning your partners detrimental?

A. A few days after I was there.
Q. About how long after?
A. About two days after.
Q. Had you made your arrangements with these firms before you heard these things?
A. Yes, sir. I heard that I was not associated with the proper parties.
Q. Which one of these firms told you about it?
A. There was a man by the name of Gioe, and several other citizens and strangers.
Q. You heard it from a man named Gioe and several other citizens?
A. Yes, sir.
Q. Name the other citizens.
A. Well, I don't remember their names; they were people I got introduced to and had never seen before.
Q. So, then, there is but one person you can refer back to and that is Salvadore Gioe?
A. Yes, sir.
Q. What did Salvadore Gioe say to you?
A. Well, he told me what I had heard on the streets from the strangers.
Q. You heard it prior to that, then, on the streets from strangers?
A. Yes, sir.
Q. When you went to see Mr. Gioe you had heard rumors
726 on the streets detrimental to your partners?
A. Yes, sir.
Q. And when Mr. Gioe spoke to you about it you told him that you had heard the same thing on the streets from strangers?
A. Yes, sir.
Q. What did the strangers on the streets tell you?
A. Just what I repeated last night.
Q. Well, what was it?
A. That my partner, Mr. I. Randazzo, was an escaped convict, and that if he ever came back to Sicily he would be hung.
Q. You heard that two or three days after you arrived in Palermo?
A. Yes, sir.
Q. You heard it after you had made arrangements for the firm?
A. Yes, sir.
Q. From strangers whom you cannot name, and you knew it when you went to see Mr. Gioe?
A. Yes, sir.
Q. What did Mr. Gioe say to you?
A. He told me that I was not connected with the proper parties.
Q. Tell us the whole of his conversation—how the conversation happened, what he said, and what you said.
A. He told me that I was not connected with the proper parties; that one of my partners, Mr. I. Randazzo, was an escaped convict from Sicily for something he did many years ago, and that if
727 he came back to Sicily he would be hung.

Q. That is what he said as to Mr. Randazzo?

A. Yes, sir.

Q. What else did he say to you?

A. He said that he would be willing to do business with my firm, but I was connected with people he did not like to trust, but that he would make shipments provided I would open letters of credit.

Q. You then agreed to do that?

A. Yes, sir.

Q. What did he propose to do in the matter?

A. Well, he made shipments to order. There was not one shipment made to Joseph Oteri & Co.

Q. Why not?

A. Because it was not customary.

Q. Then subsequent to this conversation when Mr. Gioe said he would do business with you, you then received shipments from him consigned to order, against which was drawn eight liras a box on invoices with bills of lading attached?

A. Yes, sir.

Q. Did you tell your partners when you came back that you had made this arrangement with Mr. Gioe to give him eight liras
728 a box on all shipments made by him, to be shipped to you, as he would not recognize your firm?

A. I told my partners that for policy sake I issued the letters of credit for eight liras, and that the goods would be shipped as was customary to order as any other shipper would do.

Q. You told them that absolutely?

A. Yes, sir.

Q. And you got three or four shipments from him?

A. Yes, sir.

Q. Now, did you make any other arrangement with any other house or firm in Palermo?

A. The only one was Filiberto, Gioe, and Di Cristina.

Q. Then Mr. Scalzo came when you got through with all that?

A. Yes, sir.

Q. And then you told him, as you stated, that all the business in Palermo had been fixed up and for him to go where?

A. Who?

Q. Mr. Scalzo.

A. He went to Milazzo to see his brother.

Q. Did he go there for the purpose of making business arrangements for the firm of Joseph Oteri & Co.?

A. He went there to see his relatives.

Q. Did you tell him where to go?

729 A. I did not.

Q. Did he not go to Milazzo in order to make arrangements for your firm?

A. No, sir.

Q. He didn't go there for the interest of the firm?

A. No, sir; he went there for his own personal account.

Q. Then I understand you to say that all those expenses incurred to go to Sicily and New York to be solely in the interest of the firm,

and the balance of those expenses incurred by Scalzo and Di Cristina were for their own private affairs?

A. No, sir; they were all for the firm.

Q. The expenses were incurred by the firm?

A. Yes, sir.

Q. You say there was nothing done by Di Cristina for the benefit of the firm whilst he was in Palermo?

A. No, sir.

Q. From Palermo, you stated, you went to Messina?

A. Yes, sir.

Q. How long were you in Messina, all told?

A. About three or four days.

Q. Who was the first firm that you saw in Messina?

A. The first firm was one by the name of Banana Brothers, agents for this Phelps Bros. & Co. steamship line.

730 Q. Was it not Barnell & Co.?

A. It was Banana Brothers.

Q. Were they fruit shippers?

A. Yes, sir; and agents of Mess. A. Cussimano & Co.

Q. Did you do business with them?

A. Well, as I stated before, the first day they welcomed us; the second day they didn't look at us at all.

Q. I asked you did you do any business with them?

A. No, sir.

Q. Did you see any firm that day?

A. We went and called, while there in Messina, on Baller, Parandelli, Costerralli, and Tario.

Q. What agreement did you make with Tario?

A. We agreed to let him have one per cent. for all the consignments he would solicit for our firm.

Q. What else?

A. Nothing else.

Q. Did he ship any consignments for your firm?

A. Yes, sir; one or two shipments.

Q. Who were they from?

A. I don't remember.

Q. What was the amount of these shipments?

731 A. Very small.

Q. What were they?

A. Lemons and oranges.

Q. What amount was realized for them?

A. A very limited amount.

Q. What do you call limited?

A. I don't believe it exceeded two hundred dollars.

Q. What arrangement did you make with Costerralli?

A. They told us they would not ship another box of fruit to New Orleans, as they were sick of New Orleans—that the market was all broken up there and they would not realize any amount for their goods.

Q. You didn't make any arrangements, then?

A. Yes, sir.

Q. What arrangements did you make?

A. We made arrangements to buy one hundred and fifty boxes of dry figs, to have them shipped to us to arrive here in New Orleans about twenty days before Christmas. We did so for policy sake, to get his good graces so he would make shipments of lemons & oranges, but it so happened he shipped the figs 'way in January and made the firm lose about one hundred and fifty dollars—about a dollar a box on them.

Q. Did you buy them in your individual name?

A. No, sir; we bought them in the firm's name.

732 Q. Were the bills of lading made in the firm's name?

A. Yes, sir.

Q. Where are all of your letters showing all the shipments made during the time the firm existed?

A. They are all here.

Q. Have you any others except those that have been brought here?

A. No, sir.

Q. Can there be any others without your knowledge?

A. That I could not tell.

Q. How were the boxes of figs marked?

A. I believe Joseph Oteri & Co., or Joseph Oteri. I don't remember exactly how they were marked.

Q. Who paid for them?

A. The firm.

Q. Where were they paid for?

A. In England; through a letter of credit issued en Costerralli's name, and they drew on the shipments.

Q. And that was done after your return home?

A. Yes, sir.

Q. Did you tell your partners of that purchase?

A. Yes, sir; they knew all about it.

Q. Did you tell them that you had bought that shipment

733 for your own private account?

A. No, sir.

Q. What other arrangements did you make with Costerrelli?

A. None after that.

Q. You made no other arrangement?

A. No, sir.

Q. Do you remember about the time those figs arrived?

A. I believe in January. I know it was long after Christmas.

Q. Was it not after the 31st of January?

A. I don't remember. I couldn't tell you, Mr. Benedict. I know it was long after Christmas.

Q. Do you remember the steamer on which they came?

A. No, sir; I do not.

Q. What arrangements did you make with Baller & Co.?

A. We made arrangements that we would issue letters of credit—of course in the firm's name—and that they would ship all they could to our firm, and draw with bills of lading attached, as is customary.

Q. How much was that letter of credit?
A. We issued the letter of credit at four liras a box.
Q. Did you make any other arrangement with Baller & Co.?
A. No, sir.
734 Q. What did he ship to you?
A. Nothing.
Q. What arrangement did you make with Parandelli?
A. The same thing.
Q. Did you make any other arrangement with any other person at Messina?
A. We did with this man Tario.
Q. Where did you go from Messina?
A. From Messina we went to Catania.
Q. What arrangements did you make at Catania?
A. None.
Q. Where did you then go?
A. To Malta.
Q. Did you go to Barcelona?
A. No, sir.
Q. Did you go to Milazzo?
A. We went there on our way going to Malta, but we didn't go ashore.
Q. You made no business arrangements there?
A. No, sir.
Q. So all the arrangements that you made was in Palermo and Messina?
A. Yes, sir.
Q. Now, what did Mr. Gioe tell you as regards to your partners, Mr. Oteri?
A. He told me that I had a partner—he told me that I associated with a man that was not my equal, and that he was an escaped convict, and that he was under sentence to be hung.
735 Q. That — Mr. Randazzo?
A. Yes, sir.
Q. What else did he say as to your other partners?
A. He didn't mention anything.
Q. Nothing was said as to the other partners?
A. No, sir.
Q. What did Mr. G. di Cristina tell you about Mr. Randazzo's character?
A. He didn't tell me anything. Mr. Randazzo is his brother-in-law.
Q. What did Mr. Hirzell tell you?
A. He didn't tell me anything; only he hinted it to me.
Q. What did he hint?
A. The same thing—that I was not associated with the right parties.
Q. What did he say to you?
A. The same thing.
Q. How did that come about?
A. Well, the old gentleman told me: Mr. Oteri, I knew your father

very well; I knew him from the old country. I am sorry to see you associated with such people.

Q. What gave rise for him to say that?

A. I don't know.

Q. Didn't you ask him for information on the subject?

A. No, sir.

736 Q. Now, you say that Mr. G. Di Cristina told you something about Mr. Randazzo?

A. Mr. Di Cristina is a brother-in-law of Mr. Ranzazzo. How could he tell me anything about his brother-in-law?

Q. What did Mr. Filiberto tell you?

A. Nothing.

Q. Now we have gone through Palermo—now we are coming to Messina. What did Costerrelli tell you about your partners?

A. Nothing.

Q. What did Baller tell you?

A. Nothing.

Q. What did Parandelli tell you?

A. Nothing.

Q. What did Tario tell you?

A. He kind of spoke in the same way that Mr. Hirzell did.

Q. What was it?

A. That I didn't associate with proper parties.

Q. But you were not associated with anybody but Terni at that time?

A. Yes, sir; but they knew of the firm.

Q. Had any of the parties done business with Mr. Randazzo?

A. I don't know.

Q. Had any of the parties done business with Mr. Scalzo?

A. I could not tell you.

737 Q. Now, when you saw Mr. Scalzo in Palermo eight days after you arrived there, what did you tell him concerning what Mr. Gioe had said concerning the rumors you had heard from strangers on the streets?

A. I told him of all the damaging rumors I had heard on the streets from strangers, and that I thought it was wise to arrange matters so that the name of Randazzo would not appear.

Q. Or otherwise to dissolve the copartnership?

A. No, sir; to leave out that name.

Q. You suggested that in Palermo?

A. Yes, sir.

Q. You are positive of that fact?

A. Yes, sir.

Q. What did Mr. Scalzo reply to you?

A. He said as soon as we would get back we would arrange these matters.

Q. And then you wrote all the letters that appear in that letter book after you got home through your clerk, Mr. Terni?

A. Yes, sir.

Q. Were the letters correct as written at that time?

A. Yes, sir.

Q. Were the statement of facts correct?
A. I presume they were.
Q. Now, in those letters I understand that you refer to ob-
738 taining information after you returned to New Orleans?
A. This information was received in Palermo and Messina. I afterwards saw a copy of this letter damaging my partners that had been 'taken out of the copy book in the hands of Mr. Tenero. I asked him for it, but he refused to let me have it.
Q. How much did you offer him for it?
A. I asked him to let me have it, and he would not give it to me.
Q. How much did you offer him for it?
A. I didn't offer him anything for it.
Q. Didn't you offer him five hundred dollars?
A. No, sir.
Q. Had he been the clerk of Cussimano?
A. Yes, sir.
Q. Did he represent that was a copy of the letters taken out of the letter book?
A. Yes, sir.
Q. Did he represent to you by whom it had been written?
A. Yes, sir; by his brother, who was also a clerk of Cussimano.
Q. What is the name of his brother, the clerk who wrote it?
A. I don't remember. I only know his name to be Tenero.
Q. Did you not go to Cussimano & Co. and ask them about it?
A. No, sir.
739 Q. Did you ask the brother about it?
A. No, sir.
Q. Did this man Tenero come to you to make a speculation from you?
A. I don't know whether he did or not.
Q. Had you any business transactions with him?
A. I became acquainted with him three or four days during this respite of John Zucca.
Q. Was it before the respite of John Zucca or afterwards?
A. It was afterwards.
Q. Then your acquaintance with him commenced during the time this respite of John Zucca was going on?
A. Yes, sir.
Q. Did you go to see him or did he come to you?
A. He came to see me.
Q. Did he come your office?
A. He met me on the street. He met me on Carondelet street.
Q. Then, when he met you on Carondelet street, he told you of the letter written to the shippers of fruit in Sicily damaging your firm and he showed you a copy of the letter?
A. Yes, sir.
Q. When was it dated?
A. I don't remember. I didn't take any memoranda of it.
Q. Well, about what time was it dated?
740 A. About the time we left to go on that soliciting trip to Europe?

Q. How was it signed?
A. A. Cussimano & Co.
Q. It was signed A. Cussimano & Co.?
A. Yes, sir.
Q. And you believe it?
A. Well, I believe it is feasible business deals. I didn't believe it.
Q. But still you acted upon it as though it were true?
A. Well, it confirmed what I had heard in Palermo.
Q. And in this letter were all these expressions of these persons you have detailed?
A. Yes, sir.
Q. What did this young man do with that letter?
A. He put it in his pocket.
Q. Where is he?
A. I don't know.
Q. Is he in the city?
A. I don't know.
Q. When did you last see him?
A. About two or three weeks after the respitation of Mr. Zucca.
Q. You say that you saw him two or three weeks after the respitation of John Zucca?
A. Yes, sir.
741 Q. Do you know where he went to?
A. I could not tell you.
Q. Do you know whether he is in town?
A. No, sir; I couldn't tell you, Mr. Benedict.
Q. Did you call upon A. Cussimano & Co. in reference to that letter?
A. No, sir; I never did.
Q. Did you call upon this young man whom you say wrote the letter?
A. No, sir.
Q. Did you make any inquiries regarding that letter?
A. No, sir.
Q. You say there were four letters of the same kind written?
A. Yes, sir, and of which Mr. Tenero showed me a copy he had taken from the letter book.
Q. Did he say there were four such letters written?
A. Yes, sir.
Q. Where to?
A. To different parties in Sicily.
Q. Did he give you the names of any of them?
A. No, sir.
Q. Did you inquire the names of any of them?
A. Yes, sir; but he couldn't remember, as he had been out of the firm for some time.
Q. Did you read the letter that he showed to you?
742 A. No, sir; it was written in Italian, but he translated it in English for me.
Q. You said yesterday that you read it yourself?

A. I read the translation of it.
Q. Then it was in Italian?
A. Yes, sir.
Q. Did he say the other letters were in Italian?
A. Yes, sir.
Q. Then if he told you the truth in the translation it was all right, but if he did not you could not say whether it was or not?
A. I just give it to you as I read it.
Q. How old was the man that showed it to you?
A. About thirty-two years old. He was a married man.
Q. Was he the clerk of Cussimano & Co.?
A. He had been, but he was out of their employ.
Q. How long had he been out of their employ?
A. I couldn't tell you.
Q. It was after Mr. Zucca's creditors had signed his respite that you first saw this man Tenero on Carondelet street when he came to you and showed you this letter?
A. Yes, sir.
Q. Did you have any other conversation with him afterwards concerning the letter?
A. No, sir.
743 Q. What did you say to him after he read the letter to you in Italian?
A. I said I would like to have the letter. I said I would do something for him. He said, I might send it to you when I leave the city.
Q. Do you know whether this man Tenero had any dispute with A. Cussimano before this letter was torn out of the copy book?
A. I don't know, sir.
Q. Did you see him afterwards concerning the letter?
A. No, sir.
Q. You never had any further conversation with him beyond that on Carondelet street?
A. No, sir.
Q. Nothing more?
A. No, sir.
Q. Do you know when Mr. John Zucca failed?
A. I could not say that he failed. I am afraid to say that. I know he asked for a respite a little over a year ago.
Q. You say that he asked for a respite a little over a year ago?
A. Yes, sir.
Q. How long was it after you had signed his respite before this young man came to you on Carondelet street?
A. About two or three weeks afterwards.
Q. Since you have been home from Sicily have you received any letters from these different houses in Palermo and Messina whom you had made arrangements with?
A. No, sir.
744 Q. You never received any letters at all?
A. No, sir.

Q. Where there not any letters on business received?
A. Do you mean business of the firm?
Q. Yes.
A. Yes, sir.
Q. Have you brought them all here with you?
A. Yes, sir.
Q. Do any one of those letters say anything about your partners?
A. I don't know, Mr. Benedict. They are in Italian.
Q. Were they read to you?
A. A part of them were, and part of them were of no consequence and were put away.
Q. You speak Italian very well?
A. Not very well. I speak it some.
Q. You were born in Sicily?
A. Yes, sir.
Q. And you have been raised here?
A. Yes, sir; I have been raised in New Orleans.
Q. Is not that the language your brother speaks—Italian?
A. Yes, sir.
Q. Is not that the language that is spoken in your brother's house?
A. I couldn't tell you, Mr. Benedict. I haven't been in my
745 brother's house for over fifteen years.
Q. Was not that the language that was spoken in your brother's firm while you were a member?
A. Yes, sir; but I always spoke English.
Q. You read and write in the English language very well?
A. Not very well.
Q. You are a pretty fair scholar?
A. Yes, sir; pretty fair. I had six months' schooling.
Q. Whenever you want to write any letter you write it in English?
A. Yes, sir.
Q. Why don't you write it in Italian?
A. Because I can't.
Q. Why don't you read in Italian?
A. Because I can't. I don't want even my children to learn Italian.
Q. When did the first consignment of fruit come to the firm?
A. The first consignment came on the steamer Jason.
Q. That came on the 19th of November, didn't it?
A. I don't remember the date.
Q. Do you remember the note that you received from your partners concerning the action about the letter book?
A. Note?
Q. Yes.
746 A. Concerning the action about the letter book from my partner?
Q. Yes.
A. No, sir.

Q. Do you remember when you were sued in the State court by your partners?

A. I was sued after I refused to let them have the letter book. I don't remember the date.

Q. Then after this suit was brought; this is the second suit?

A. I suppose so.

Q. Now, between the time that that first suit was brought and the second suit was brought, did you receive any consignments of fruit?

A. There was one large consignment that was on the way during the time of this difficulty, and it had to be attended to.

Q. Didn't you write letters to your partners after this difficulty, after they told you they would take back their capital?

A. No, sir.

Q. Are you sure about that?

A. Yes, sir.

Q. Do you remember that you wrote two registered letters on the 24th January, 1885, asking for fifteen hundred dollars each?

A. Yes, sir.

Q. Had you not been notified before this that the partnership was to be regarded as dissolved on account of your acts?

A. No, sir.

Q. You don't remember?

A. No, sir.

747 By Mr. BENEDICT:

I offer the letters in evidence marked "B 1 & B 2."

(EXHIBIT "B 1.")

NEW ORLEANS, *Jan'y 24th*, 1885.

Mr. V. Scalzo, city.

DEAR SIR: As we are about to receive two consignments of box fruit by steamers Edgard and Irthington, which will be due next week, and which it will require to pay for duties and freight, and the amounts of drafts for advances thereon, fully ten thousand dollars, amounted to and as there is on hand only in cash and available notes which can be discounted not above five thousand dollars, it will be necessary that each partner should advance at least fifteen hundred dollars to cover said deficiency. Please send me your check for same, and oblige yours,

(Signed) JOSEPH OTERI.

748 (EXHIBIT "B 2.")

NEW ORLEANS *Jan'y 24th*, 1885.

Messer Randazzo & Di Cristina. city.

GENTLEMEN: As we are about to receive two consignments of box fruit by steamers Edgard and Irthington which will be due next week, and which it will require to pay for duties, freight, and the

amounts of drafts for advances thereon fully ten thousand dollars, amounted to, and as there is on hand only in cash and available notes, which can be discounted not above five thousand dollars, it will be necessary that each partner should advance at least fifteen hundred dollars to cover said deficiency please send me your check for same.

Yours truly.
(Signed) JOSEPH OTERI.

Q. On what day did you return to New Orleans from Europe by way of New York?

A. I couldn't answer that question because I don't reme-ber the dates.

Q. How long had you been in town before Mr. Scalzo and Mr. Di Cristina returned?

749 A. They returned about a month or so afterwards.

Q. You have stated, I believe, that Mr. Randazzo cannot read or write.

A. He can sign his name. He cannot read or write, to my knowledge.

Q. You have never seen him write?

A. No, sir.

Q. Did you write any other letter to Mr. Scalzo besides the one of January 24th, 1885?

A. There was one written by the book-keeper.

Q. Are the letters I now show you, one dated 15th November and the other 19th November, 1884, addressed to V. Scalzo, St. Louis, and signed by you, in your handwriting with your genuine signature annexed to them?

Note.

Witness looks at the letters shown him.

A. Yes, sir.

Q. They are in your handwriting, dated and signed by you?

A. Yes, sir.

By Mr. BENEDICT:

I offer the letters in evidence, marked Exhibits "C 1 & C 2."

(EXHIBIT C 1.)

750 NEW ORLEANS, *Nov. 19th*, 1884.

Mr. V. Scalzo, St. Louis, Mo.

DEAR SIR: Yours of 17th inst. inclosing draft for $14.71 to hand thanks for same, the book I mean is the Fruiters' Telegraphic Code. Scattergood if you have it please send it down to me, and much oblige.

(Signed) JOS. OTERI.

(EXHIBIT C 2.)

NEW ORLEANS, *Nov. 15th*, 1884.

Mr. V. Scalzo, St. Louis, Mo.

DEAR SIR: Please find enclose our order on the German-American bank of your city for amount due me for the differences on letter of credit given me last July. After which you will be kind enough to send amount down to me and much oblige—

Yours, JOS. OTERI.

751 P. S.—Also be kind enough to send down the cord book we send you from New York as we wish to send it to Mr. Scalzo brother.

With kindest regards from myself and Mr. Scalzo.

I remain, yours truly,

(Signed) JOS. OTERI.

Q. Did you receive any money from Mr. V. Scalzo *in* route or in New Orleans outside of the five thousand dollars which he paid up as his share of the capital?

A. In business transactions I did.

Q. What do you call business transactions?

A. On this lot of fruit his brother, Mr. P. Scalzo, shipped from Millazzo on the steamer Jason. I paid the freight and duty on the lot and turned the oranges over to Mr. V. Scalzo and he took them up to St. Louis and disposed of them to the best advantage and gave me the account sales and a check for the nett proceeds of the sale.

Q. Are those account sales and checks in the papers you gave the commissioner?

A. Yes, sir.

Q. Who paid the freight and duty on those oranges on
752 the steamship Jason?

A. I paid it first and then Mr. Scalzo paid it back to me.

Q. And he paid you also the nett proceeds of the oranges he sold in St. Louis?

A. Yes, sir.

Q. What did you pay for freight and duty?

A. I don't remember.

Q. How were the entries made on your books?

A. We credited the shipment for what it realized, charged it up for freight and *and* duty, and charged Mr. Scalzo for the oranges he took to St. Louis, and when he sent the account sales and check we deducted our commission and forwarded the difference to his brother in Millazzo.

Q. And to whose credit did you put the balance of the money that you brought back from your trip to Europe?

A. To the firm of J. Oteri & Co.

Q. When and where did you open the bank account of J. Oteri & Co.?

A. I opened it as soon as I came from Sicily, in the Union National bank.

Q. When did you get back from Sicily?

A. I don't remember.

Q. How many days after you got back from Sicily was it before you opened the bank account of J. Oteri & Co.?

A. About three days; about two or three days.

753 Q. What bank did you opened it in?

A. The Union National bank.

Q. How much did you deposit there when you opened it?

A. Every dollar that was due the capital of fifteen thousand dollars, less the amount of expenses incurred in travelling and the amount paid out to Mr. G. Di Cristina for account of his brother-in-law, Mr. I. Randazzo; that was deducted from the capital.

Q. Did he give you a receipt for the money that had been paid over to him?

A. No, sir.

Q. Did you get a receipt?

A. I didn't; some one did.

Q. Did you get hold of that receipt?

A. It was put away either by M. Terni, the book-keeper, or by Mr. A. Di Cristina.

Q. You read the receipt?

A. No, sir; I did not; it was in Italian.

Q. Was it read to you?

A. I don't remember.

Q. What has become of that receipt?

A. It must be among the papers.

Q. Who gave you the receipt?

A. I never got it.

Q. Who gave it to the book-keeper?

754 A. Either Mr. Scalzo or Mr. Di Cristina.

Q. Was it not brought by Mr. Scalzo on his return from Europe?

A. No, sir; I never saw it.

Q. Didn't Mr. Scalzo hand it to you personally?

A. No, sir; he may have laid it on the desk.

Q. Would you remember the receipt if you were to see a copy of it?

A. I don't believe I ever saw it.

Q. When did you make that deposit of fifteen thousand dollars less those expenses?

A. I believe two or three days after I arrived—that is, the whole of the balance less the amounts I have spoken of.

Q. Had you received from your partners then the full amount of their capital?

A. No, sir.

Q. Then you advanced it yourself?

A. I advanced two thousand five hundred dollars for account of Mr. I. Randazzo, as he gave me a mortgage on one of his properties.

Q. And then you advanced the three thousand dollars for Mr. Scalzo?

A. The three thousand dollars was sent to me by Mr. Scalzo, and I deposited that, too.

Q. I want to know if you deposited the fifteen thousand dollars less what you had paid out for expenses and less the amount you had given to G. Di Cristina.

755 A. I deposited the fifteen thousand dollars less the amount I spent for travelling expenses and less the amount I gave to Mr. G. Di Cristiana at Palermo, and the balance I had on hand I deposited to the credit of the firm of J. Oteri & Co. I didn't deposit the fifteen thousand dollars because I didn't have it.

Q. Then you did not deposit to the credit of the firm the amounts that had not been paid in by your partners at that time?

A. No, sir.

Q. Then how much did you deposit when you made that deposit, two or three days after your return from Europe?

A. Well, I figured on the two thousand five hundred dollars that Mr. Randazzo had given me, and the two thousand dollars that Mr. Scalzo had given, and my five thousand dollars less the amount I had paid out for travelling expenses, and the amount I had given Mr. G. Di Cristina for account of Mr. I. Randazzo.

Q. How much of that amount did you deposit?

A. I don't remember; the bank book will tell you.

Q. Does the bank book show?

A. Yes, sir.

Q. Have you got the bank book here?

A. Yes, sir.

Q. Did you draw against that bank all the time?

A. Yes, sir.

756 Q. Did you make deposits in that bank all the time?

A. Yes, sir.

Q. And you did not keep any of the money of the concern in your private bank at all?

A. No, sir.

Q. None at all?

A. No, sir.

Q. No drafts were paid out of your private account?

A. No, sir

Q. No shipments went to your private account?

A. No, sir.

Q. Everything, then, from the commencement of the partnership went on in the name of Joseph Oteri & Co.?

A. Yes, sir.

Q. Except the letters of credit?

A. Yes, sir.

Q. And except the letters that you wrote *to* the 7th of October?

A. Yes, sir; these letters I wrote, as the books show, in my individual name, and no one had authority to draw on the bank but myself individually. I was safe in that deal.

Note.

757 The further taking of testimony in this case was continued until Friday, May 29*st*, 1886, at 3 p. m.

NEW ORLEANS, *May* 21*st*, 1886—3 p. m.

The further taking of testimony this day resumed.
Present: Mr. W. S. Benedict, for plaintiffs.
" " Jos. P. Hornor, " defendant.

Cross-examination continued.

By Mr. BENEDICT:

Q. Mr. Oteri, did Mr. Gioe say that he would not do any business with Randazzo or Scalzo?

A. He told me he would not do any business for the firm. He didn't mention any name.

Q. Well, why did he afterwards do business with the firm?

A. Because he had received letters of credit from me individually.

Q. Why did he, after having received the letter of credit from you individually, make shipments to the firm?

A. He made shipments to order.

Q. Why did you do business with him in the name of the firm when your letter of credit was Joseph Oteri individually?

758 A. Because I was senior member of the firm, and as things were not satisfactorily arranged I did so temporarily for the benefit of the firm to solicit consignments.

Q. How long was it after your return from Sicily before you made your first deposit in the bank?

A. About two or three days afterwards.

Q. Look at your bank book and see your error.

Note.

Witness looks at the bank book shown to him.

Q. I find that the first entry is November 15th, 1884.

A. I don't remember the date when we arrived here.

Q. It appears by your letter book that you wrote and signed letters in this city and sent off letters of credit on the 7th of October, 1884. You say that two or three days after you arrived you made your deposit in the Bank of ——, the balance you had in your hands. How could you reconcile those facts that your bank book shows? Your bank book shows deposits to have been made on the 15th of November, 1884.

A. Well, let me explain that to you. The letters of credit were issued before that deposit was made. They were issued with the guarantee of the ten thousand dollars premium bonds that I gave to the cashier. They issued letters of credit on that guarantee.

759 Q. I am not speaking as to the mere fact of the issuance of the letters of credit, but of the fact of your bank book showing the first deposit to be made on the 15th of November, 1884.

A. Well, I deposited the premium bonds before the 15th of November. It is only a mistake of memory of mine.

Q. Have you not made other mistakes in your memory in regard to your testimony in this case?

A. I am liable to make them.

Q. Have you made any other mistakes in relation to the things you have stated?

A. I may have made mistakes in dates.

Q. Nothing else?

A. No, sir; I am certain.

Q. Are you confident on that subject?

A. Well, I will not say I am confident, but to the best of my knowledge.

Q. When you had your conversation with Phelps Bros. & Co., either in New York or Liverpool, did you mention the names of the members of your firm or did you represent yourself as being in business solely for yourself, individually?

A. I represented myself as being the senior member of Joseph Oteri & Co.

Q. When was that?

A. Well, in New York on my way to Europe.

Q. What did you represent to the house of Phelps Bros. & Co. in Liverpool?

A. The same thing.

760 Q. And what did you tell the New York house on your return from Europe?

A. The same thing.

Q. So you told those gentlemen that you were the senior member of the firm of Joseph Oteri & Co. and did not name the different members of the firm?

A. They knew the different members.

Q. You say they knew the different members?

A. Yes, sir.

Q. You are certain of that?

A. Yes, sir; because they had circulars to that effect.

Q. Who was the agent of Phelps Bros. & Co. in Sicily?

A. I believe Banana Bros.

Q. Do you know whether they had one?

A. I could not tell you personally.

Q. Did they represent they had one in Sicily?

A. Not to my knowledge; but that was told to me on the streets here in New York and in Sicily.

Q. That Phelps Bros. & Co. had an agent in Sicily?

A. Yes, sir.

Q. Who told you?

A. Different people.

Q. Can you name any of them?

761 A. I couldn't tell you their names, because there were so many people.

Q. How did that come about?

A. It was a fact known by the business com-unity and information given to me.

Q. Why did you not get direct information?

A. I didn't care about doing so.

Q. Well, whom did those various people tell you were the agents of Phelps Bros. & Co. in Sicily?

A. Banana Bros.

Q. Did you call upon Banana Bros. in connection with Phelps Bros. & Co.'s business?

A. I called upon them and asked them to do all they could to assist us in this new enterprise.

Q. Was that in connection with Phelps Bros. & Co.'s business?

A. No, sir; it was in connection with Joseph Oteri & Co.'s business.

Q. Did you mention to Banana Bros. the fact that you had been to Phelps Bros. & Co. in Liverpool?

A. I did not have time to express myself to them.

Q. Why?

A. Because I had to attend to something else.

Q. Why didn't you return?

A. Because when I did return they showed a cool face towards me. The next day we were to carry out our programme.

762 Q. Did Banana Bros. represent to you anything concerning Phelps Bros?

A. No, sir.

Q. When did you tell your partners you had issued the letters of credit in your own name?

A. As soon as Mr. Scalzo and Mr. Di Cristina returned. All of us were at the office; five of us.

Q. How long after they arrived?

A. The next day.

Q. Why was it that Mr. Carl Kohn said that he would not do business with anybody except yourself?

A. I never said that. I said it was necessary to issue letters of credit, and Mr. Kohn said the Bank of England held the bank here responsible and he would hold me responsible. We didn't care what name the letters of credit was issued in. They issued the letter of credit one bank in favor of another.

Q. Didn't Mr. Carl Kohn, as president of the Union National bank, say that he would not do business with a commercial firm consisting of five members, but would do business with a single member of the firm?

A. He didn't say so; it was immaterial to him.

Q. Why was it that he made the letters of credit out in the individual name of Joseph Oteri?

A. Because he knew me personally, and he knew that I brought him the collaterals, and it was an error of his book-keeper
763 or some one that he issued them for Joseph Oteri individually.

Q. Did you tell him to issue them in the name of Joseph Oteri & Co.?

A. I did afterwards, after he had issued them in the name of Joseph Oteri.

Q. And he refused to do so?

A. Yes, sir.

Q. Was it not on account that you had just returned and was carrying out your agreement with parties in Sicily that you had letters issued in your own name?

A. No, sir.

Q. Did you not express yourself to a number of persons in Italy, Gioe among others, that you would carry on the business of these consignments for yourself individually?

A. No, sir; I never expressed that to any one. I told them that I would protect their interests. They were inclined to ship the goods to order individually or for the firm. I did this for policy sake.

Q. Do you know it to be a fact that five names are better than one name in commercial matters?

A. Yes, sir; I do.

Q. Is it usual for a man to reject five names for the purpose of taking one?

A. Well, circumstances alters cases.

Q. Is that your only explanation?

A. That is my theory.

764 Q. Now, upon whom did you issue those letters of credit on the 7th of October?

A. Upon different parties.

Q. By whom were they drawn?

A. The Union national bank issued the letters of credit.

Q. Upon whom?

A. Upon the Bank of London. I believe it was Lazard Freres & Co.

Q. Now, you say that when you issued those letters of credit you issued them for how much?

A. Fifty-five thousand dollars.

Q. Don't you mean fifty-five hundred pounds?

A. They were equivalent to fifty-five thousand dollars.

Q. Don't you mean fifty-five hundred pounds—that is, twenty-seven thousand five hundred dollars?

A. Something like that.

Q. So that whenever you say fifty-five hundred dollars you mean fifty-five hundred pounds?

A. I know it was twelve of fifteen letters—some for five hundred dollars and some for a thousand pounds.

Q. Now, you stated that your partners agreed to advance four liras a box on all consignments?

A. I never said that.

765 Q. Before you left New Orleans did you or not agree with your partners that three liras a box should be the outside limit of advances on all consignments of freight to the firm?

A. I never did.

Q. You did not?

A. No, sir.

Q. You are positive?

A. Yes, sir.

Q. Did you or not make an agreement with your partners as to what amount should be advanced on all consignments to the firm from Sicily?

A. No, sir; there was no agreement. If you will allow me I will explain the reason why.

Q. When did you receive the first payment from Mr. Scalzo after you had made a demand for the balance of capital?

A. I don't remember the date, Mr. Benedict. I know he brought me a check for three thousand dollars.

Q. When did you receive the balance of the capital from Mr. Randazzo?

—. I don't remember the date. I know he brought me twenty-five hundred dollars.

Q. Then, between the date that you returned and the date that you received the balance of the capital from your partners, how much money had you spent for account of the concern?

A. The amount of travelling expenses incurred and the
766 amount given to Mr. G. Di Cristina for account of Mr. I. Randazzo, and I don't know of any other.

Q. Then why did you call upon your partners at that time when you had not spent any more money to contribute the balance of their capital, when it was not needed at all?

A. I called long after that time; it was the time that I arrived. I went and called on Mr. Randazzo the next day after I arrived, or a couple of days afterwards, and asked him to give me the balance of his share of capital.

Q. Why didn't you deposit the capital of the concern in the bank before the 15th of November, 1884, when before that time you had received the full amount of capital of fifteen thousand dollars?

A. I had only received twenty-five hundred dollars from Mr. Randazzo and two thousand dollars from Mr. Scalzo, and after paying travelling expenses and the money I paid to Mr. G. Di Cristina for account of Mr. Randazzo left only some twelve hundred and odd dollars. My five thousand I had.

Q. Your share, of course, was five thousand dollars also?

A. Yes, sir; I represented five thousand dollars.

Q. Is this your letter of credit to G. Di Cristina signed by you originally?

(Witness looks at the letter of credit.)

A. I recognize my signature, but I cannot read it, because
767 it is written in Italian.

By Mr. BENEDICT: I offer the letter of credit in evidence, marked Exhibit "D 1."

(See in this transcript, page 136.)

Q. What did you say to Mr. G. Di Cristina in relation to that letter of credit?

A. The letter of credit reads for itself.

Q. What is your remembrance concerning it?

A. It was a letter of credit issued as is customary, as you would issue to any other man.

Q. It is stated in this letter of credit, dated the 10th of October, 1884, that his drafts opened at ninety days, accompanied by proper papers, would be honored at the rate of four francs per box of green fruit. Under and by virtue of whose authority did you make that agreement and open that letter of credit to Mr. G. Di Cristina?

A. That was the agreement made by myself and Mr. Hector Terni, as he was well posted in the business. It is customary to issue a letter of credit in general at four liras a box, with some exceptions. With some big shippers I make a different rate.

768 By Mr. BENEDICT: I offer the translation of letter of credit in evidence, marked Exhibit "D 2."

(See in this transcript, page 137.)

Q. Now, we were speaking yesterday about a receipt which Mr. Scalzo brought to you from Mr. G. Di Cristina, and that you don't remember whether you read it or not, but you think Mr. Terni had it.

A. I think he laid it on the table—either Mr. Terni or Mr. Scalzo.

Q. Will you be kind enough to look at this document and state whether that is the receipt?

A. I don't know anything about it.

Q. Will you be kind enough to look at this paper purporting to be a translation of it?

A. I never saw the original and I don't care about looking at the translation of it.

Q. Now, this receipt purports to be dated the 6th of October, 1884. When did you change the amount of two hundred and forty-six pounds and sixteen shillings that you had paid to Mr. G. Di Cristina for account of Mr. I. Randazzo?

A. It was charged by the book-keeper. I don't remember when he charged it, but he had charge of that business.

Q. Have you any letters amongst your papers from G. Di Cristina?

A. There must be some amongst them.

769 Q. Please find some for me.

(Witness looks amongst the papers for the letters.)

Q. I find amongst your papers an invoice, dated Palermo, 2nd December, 1884, to Joseph Oteri & Co., New Orleans, by Gaetano Di Cristina and signed by Gaetano Di Cristina. Is that original?

(Witness looks at the invoice.)

A. That is the original.

Q. Now, will you take that paper and compare the signature of Gaetano Di Cristina with the signature of G. Di Cristina on the copy of receipt which I have shown you in Italian?

(Witness compares them.)

A. That is private.
Q. Are they not the same signature?
A. They look very much alike.

By Mr. BENEDICT: I offer in evidence the receipt from G. Di Cristina, which is a duplicate of the one stated by Scalzo to have been given to Oteri, together with the translation thereof, marked Exhibits "E 1 & E 2;" also the invoice, marked "I."

EXHIBIT "E 1."

PALERMO *sei Ottobre milleo attocentot aquarto.*

770 Io qui sotto scritto Gaetano Di Cristina di chiaro avere reciveto dai Signori Joseph Oteri & Co., New Orleans dei quali ne sono agente in questo, la somma di lire sterline ducento quarteisi e sedici scellini pari a lire Italiane seimula cento settanto, in acconto anticipio alle cas se agrumi che verrammo fa me lingo la propria campagna agrumaria 1884–'85 a New Orleans a consegna vendita dei sudeth Signori Joseph Oteri & Co.

Sono L. ML–. G–. 00.

(Signed) G. DI CRISTINA.

EXHIBIT "E 2."

Translation.

PALERMO *Oct* 6. 1884

I the undersigned Gaetano Di Cristina declare to have received from Messer Joseph Oteri & Co., of New Orleans, whose agent I am in this city, the sum of 246. 16. 0 pounds stg. equal to 6170 Italian lire, on account of advances against boxes of green fruit which will be by me shipped during the season 1884–85 to New Orleans, consigned for sale to the said Joseph Oteri & Co.

(Signed) G. DI CRISTINA

771 "EXHIBIT I."

PALERMO 2 *Decembre* 1884

Sigr Joseph Oteri & ci di New Orleans, Dare a Gaetano Di Cristina. 2 agente. p. spese fiette come sotto descritte, p. y. conto dal 30 Agosto al 30 Novembre morente anno.

Agosto 30.	Per 300 cercolari a y. nome Lit	40	
" "	Francobolli p. envio di dette cercolari	4	20
Settembre 15–22.	Francobolli p. due lettere p. N. O.		50
" 30.	Telegramma p. New Orleans	31	55
Ottobre dal 2 al 9.	Francobolli p. 3 lettre		75
" 9.	Telegramma p. New Orleans	31	55
13 al 22 Nov.	Francobolli p. 4 lettere	1	25
Certificato.	Consolare Coroinlla	13	25
		123	05
		£4	18

(Signed) GAETANO DI CRISTINA.

Che passerete a ny credito in conto corrente.

772 Q. Do you remember how many vessels had arrived and the cargoes sold before you were notified by your partners of their intention to withdraw their capital from the concern?

A. I don't remember any notification of that kind; I don't remember the number of vessels that arrived.

Q. As soon as you had received notice from your partners, did you not immediately balance your bank account?

A. I don't remember ever receiving any notice.

Q. Did you not balance your bank account as soon as you heard what your partners intended to do?

A. I did not know their intentions. I did, as duty bound, try to straighten up the books, but, as I did not have any one to do it, I employed Mr. Joe Bein.

Q. Did you not, then, after that time endeavor to have your partners made responsible for losses sustained of your having made advances on fruit in cases of the amount agreed to be advanced?

A. There was no endeavor on my part.

Q. Did you not consult with your attorney before the suit was brought concerning the notice you had received from your partners through their attorney?

A. I don't remember seeing the notice.

Q. Did you not authorize your attorney to write a letter and enclose a trial balance for the month of December, 1884?

773 A. Yes, sir.

Q. Will you be kind enough to look at that trial balance and state whether that was the one you gave to your attorney?

(Witness looks at document shown to him.)

A. Yes, sir.

By Mr. BENEDICT: I offer the trial balance enclosed in the letter of the 28th January, 1885, from defendant's counsel, and also the letter of 28th January, 1885, marked Exhibits "F 1 & F 2."

EXHIBIT "F 1."

NEW ORLEANS, 28 *Jan'y*, 1885.

W. S. Benedict, Esq., att'y of copartners of J. Oteri & Co.

DEAR SIR: Yours of 24th inst. did not reach our client until yesterday, and we now hand you enclosed the ac. asked for, being trial balance for Dec., 1884.

Yours of 27th inst. was received by our client this morn-
774 ing. As our client has not failed to comply with requests and has not refused to execute act, he has no further reply to make thereto.

Yours truly,

(Signed) JOSEPH P. HORNOR &
F. W. BAKER,
Att'ys for Joseph Oteri.

EXHIBIT "F 2."

Trial Balance, J. Oteri & Co.

		DECEMBER, 1884.	
1.	Merchandise	5,115 18	5,299 98
2.	J. Oteri	1,250	5,000
3.	V. Scalzo	1,594 55	6,026 93
4.	Randazzo & Di Cristina	1,247 15	5,015
5.	Cash	2,747 78	
6.	Expense	3,088 89	
7.	Interest	51 38	56 71
8.	H. Terni	595 37	300
9.	R. Filiberto & Co.	105 11	33 40
10.	S. S. Jason	1,191 65	1,225 73
11.	Bills receivable	3,329 40	
12.	Profit & loss		54 86
13.	S. Goie	1,610 27	131 68
14.	G. Di Cristina	498 86	233 77
15.	S. S. Coronella	1,640 27	687 80
		24,065 86	24,065 86

775 Q. Did you write to your partner, Mr. V. Scalzo, at St. Louis prior to the date of the letters that were offered in evidence yisterday?

A. I wrote him on several occasions—that is, the firm did. I only wrote one or two letters in English. Most of the letters were written in Italian.

Q. Did you write the letter written in English of November 3rd, 1884, which I now show you?

A. Yes, sir.

By Mr. BENEDICT: I offer the letter in evidence, marked Exhibit "G."

EXHIBIT "G"

NEW ORLEANS *Nov 3rd* 1884.

Mr. V. Scalzo. St. Louis., Mo.

DEAR SIR:—Yours of 1st to hand contents duly noted: I would be pleased to have you come down sooner if possible, because this matter has to be settled very soon, otherwise firm has to dis-
776 solve. Mr. Randazzo tells me that he cannot pay his share of his capital and it so appears that he cannot or will not pay his share: therefore Mr. Scalzo you can see that this firm will have to dissolve and those that will pay in their capital will remain.

I have received this a. m. documents from your brother advising of the shipment of 1,007 boxes oranges and lemons, no advice of any other shipment made by either G. Di Cristina or any-

body else, strange to say the steamer Jesan is consigned to A. Schriber.

Mr. H. Terni has overdrawn $95.37 and I have notified him that he could not draw any more, and as he received my notice he has not come any more to the office, and I presume he has quit.

Yours truly,

(Signed) JOS. OTERI.

Q. Did you make any arrangements with anybody in Sicily for the purpose of doing business on joint account individually?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Did you make any such arrangement with anybody?

777 A. I don't remember.

Q. If you had would you remember?

A. Yes, sir.

Q. Then, in other words, you mean to say that you individually would not undertake to make any agreement with any party in Sicily to make shipments of oranges or other fruit on joint account to yourself individually?

A. No, sir.

Q. Read this paper which purports to be a translation of a letter written in your letter book in the Italian language and signed by you on the 7th of October, 1884, to Ferdinand Baller & Co., of Messina?

(Witness reads the letter.)

A. This is correct; this was done for the benefit of the firm.

Q. See if you don't state in that letter that you had dissolved the firm?

A. I state that; yes, sir.

Q. And that was done for the interest and benefit of the firm?

A. Yes, sir.

Q. Now I will show you a paper which purports to be a letter written to R. Filiberto & Co., of Palermo. Will you be kind enough to state whether that was done by you for the same reason?

A. I think it is a fact.

Q. That was done for the benefit of the firm?

778 A. Yes, sir.

Q. Will you be kind enough to explain in your own language how any such letters are beneficial to the firm?

—. Yes, sir.

Q. Well, please do so.

A. Well, I was aware of the damaging reports concerning my firm, and, as I have already stated, and to try and make up a portion of our expenses of the travelling to Europe, I used all kinds of ways to get consignments to make commissions; it would help out the expenses incurred.

Q. So your sole object was to make yourself firm again and carry on the business for your own account and give your partners back their money?

A. No, sir.

Q. What was it?

A. It was a letter of mine—not what we call a true letter but an assumed letter for the sole purpose of soliciting consignments and realizing from those consignments.

Q. But I understand you to say yesterday that you had made all your arrangements for your firm and agreed to issue letters of credit to Filiberto. How can such a letter benefit your firm?

779 A. It would have lead those shippers to ship us their goods without any fear whatsoever. It was all policy sake on my part and that was cancelled afterwards.

Q. Did you inform your partners that you had sent these letters for the benefit of the firm?

A. Yes, sir.

Q. Every one of them?

A. Yes, sir; I showed them the book. They looked at the book and saw more of the book than what I did. They could read Italian, whereas I could not. I had to refer to the book-keeper to read the books to me.

Q. When did Mr. Scalzo first come to New Orleans after he had returned from the trip that he made with you?

A. I don't remember the dates.

Q. Mr. Oteri, will you refer to the expense account in your bank book and tell us what it consists of?

(Witness looks at Ledger Book, on page 5.)

Q. Have you referred to it?

A. Yes, sir.

Q. You have found it?

A. Yes, sir.

Q. Does this ledger, on page 5, show the details of expense account?

A. There was no detailed account kept.

780 Q. Then you want to charge your partners their share of the expense account, $2,538.32, without anything in the way of details to show that item?

A. For answer witness refers to the cash book, page 3, showing entries making this sum.

Q. I see you have charged here as amount paid by you, $1,888.82. That was for yourself, Di Cristina, Scalzo, and Hector Terni, for the amount of the trip to Liverpool, London, and back again?

A. That was for hotel bills, steamship fares, railroad fares, &c., and expenses at quarantine.

Q. Then I see you have charged Mr. Scalzo $259.50. Was that in addition?

A. I gave him that money as a loan.

Q. Where?

A. That is the money I referred to when he went to Milazzo to see his family. My book-keeper kept a memoranda of it.

Q. Where are the memorandas kept by Mr. Terni? Are they not in that book?

A. They are, and some are dictations of mine. Mr. Terni left the office and left the books upset, and, of course, he did not have time to write them.

Q. This $259.50 was money given to Mr. Scalzo at Palermo and elsewhere?

A. Yes, sir.

Q. Did you give him any more?

A. He is charged up for some twelve hundred and odd dollars.

Q. Did you give him any more?

781 A. I know I paid him somewhere else. I paid him some here in the city. Mr. Terni kept a memoranda.

Q. Where did Terni get the memoranda from?

A. He was on the trip.

Q. Did he know whenever you paid out any money to Mr. Scalzo?

A. Yes, sir.

Q. Was he always with you?

A. Yes, sir.

Q. Invariably?

A. Yes, sir.

Q. Was there any occasion when you transacted business that he was not alongside of you?

A. No, sir.

Q. Now, this amount that you have charged to Mr. Scalzo of $259.50, that embraced all the moneys that you paid to him in Palermo and around Sicily?

A. Yes, sir; I believe so; and the two hundred pounds that is charged up.

Q. And I see you charge him $190.90. Where did you get that from?

A. That is the amount I paid him in Palermo, with the $259.50, for duties and other little amounts.

Q. How could you pay those duties, &c., on the 5th of October, New Orleans, on the steamer that arrived about a month afterwards, whilst he himself was in Europe?

782 A. I paid them first, and he paid them to me.

Q. But it seems you have charged the duties to him?

A. Mr. Benedict, I just vouch for that book.

Q. Will you swear this book is correct?

A. Yes, sir.

Q. All these entries were made under your own eye?

A. Yes, sir. I didn't keep the books; the book-keeper kept them.

Q. Now, it seems you have charged Mr. Scalzo $250.00 more. What was that for?

A. The documents speak for themselves.

Q. What documents?

A. Among the papers. I cannot read Italian.

Q. Have you anybody that can explain the books?

A. I will get a person that can. I will get Mr. Del Orto and his clerk, Mr. Joe Bein.

Q. Did they keep those books?

A. There was one that was translated from Italian into English, and Mr. Joe Bein made the entries.

Q. Who made those cash entries that I am reading from?

A. I think Mr. Joe Bein.

(Witness is shown the page Mr. Benedict is referring to—page 3 of cash book—and says he don't know the handwriting.)

Q. If Mr. Joe Bein wrote this book, from what did he write it?

783 A. From documents—from memorandas.

Q. When did he write it?

A. At the time that my partners came at the office and raised that rumpus.

Q. These books commenced to be written on the 5th of October, just about the time you returned from Europe?

A. Yes, sir.

Q. You got Joe Bein to write these books when he was in your employ?

A. They were commenced by Mr. Hector Terni. After Mr. Hector Terni vacated the office, and after my partners made demand for that letter book, I vacated the office and went to Mr. Joe Bein, and through memorandas kept in the previous little set of books Mr. Joe Bein and Mr. Del Orto ferreted out the whole transaction and made new entries in these books.

Q. Then I am to understand that these books have been made since the dissolution with your partners?

A. I never was dissolved with my partners.

Q. Well, since the fuss with your partners?

A. Yes, sir.

Q. Now, we ask you to bring into court your original books.

A. I believe they are here.

Q. Show them to me.

(Witness finds the original books.)

Q. Now, let me have the one in your hands which you say

784 is the original book?

A. I am not a book-keeper; I don't understand any of the accounts; I left it to the book-keeper. If Joe Bein was here he would explain it better.

Q. Then all the books you ever had, and all the papers you ever had or kept, are here?

A. Yes, sir.

Q. Are you a book-keeper enough to know when the entries in the books are correct?

A. No, sir; I am not a book-keeper.

Q. Did Mr. Terni keep his books all right?

A. I think he did.

Q. I find in the book before me, in the nature of a ledger account, written in what you say is the handwriting of Mr. Terni, and headed V. Scalzo, by cash two thousand dollars, I don't find the entry of any date when that was received?

A. That was received in St. Louis. We did not keep a memoranda of the date. It was received in St. Louis on our way to Europe.

Q. I don't find — any other of those books which you say were kept by Mr. Terni, and which are the original from which Mr. Bein made copies, any reference to the items in the cash book, page 3, in the handwriting of Joe Bein, therefore when did Mr. Bein get those items in the books from?

785 A. Mr. Bein and Mr. Del Orto can explain that better than what I can.

Q. How can they explain anything when they were not clerks of your firm at — time?

A. According to my memoranda and my dictation.

Q. That was after the fuss with your partners commenced?

A. Yes, sir.

Q. I only find two books here purporting to be kept by your book-keeper, Mr. Terni. One of them purports to be in the nature of a ledger account, and the other an account book kept with the different steamers. Where is the original book from which those entries purports to come?

A. All the books are here.

Q. Will you be kind enough to look at the letter book and show me the amount of expenses that you paid?

A. I told you about the expenses. There was no account kept. I omitted to tell you yesterday that I had $960.00 with me in a check.

Q. In a check?

A. Yes, sir.

Q. On what?

A. I went to the Louisiana National bank and got out the money. It was the balance due my private account.

Q. How long had you drawn that check before you went away?

A. The day before we left.

Q. You kept an account of yourself with the Louisiana National bank?

786 A. Yes, sir.

Q. I call for that check.

(Witness produces it.)

Q. Have you found it?

A. Yes, sir.

Q. Who did you pay that money to?

A. I kept it in my pocket and used it for hotel bills, steamship fares, railroad fares, &c., and other purposes on the trip.

Q. Did you not draw that money to leave with your family during your absence?

A. No, sir.

Q. Did you not draw any check for that purpose?

A. Yes, sir; long before that time I drew a check for that purpose; and then again my book-keeper used to supply my family with funds. Mr. W. R. Murphy used to be a book-keeper of mine

in my local fruit business, corner of Front & Canal streets. He used to supply my wife with all she wanted.

A. Did you amuse yourself on the trip on the steamers in any way personally?

A. No, sir.

Q. Did you lose any money at games of chance?

A. What do you mean?

Q. Gambling.

A. No, sir; I would indulge whilst here.

Q. Then you are certain that no money has been lost in that
787 way and charged up to the firm?

A. Yes, sir.

Q. You cannot explain those books, then?

A. No, sir; Mr. Bein and Mr. Del Orto will explain them to you and Mr. Hector Terni, if he is here.

Q. Mr. Oteri, did you not lose every cent you had left coming back to New York, and did you not put up your watch and chain as security?

A. I never did. I made five hundred dollars on the Cleveland bet. I made five hundred dollars on the wager.

Q. I see by reference to your check book that your first check is drawn for the firm on the 17th of November, 1884, for duty on the steamship Jason $1,245.00. On what account had you drawn money before that time for the benefit of the firm, if any?

A. Before that time?

Q. Yes.

A. It was drawn from my account if the firm's account was not started in bank. Before that time I used to pay out the bills out of my own account and keep memorandums of them.

Q. Did you keep a book of your own?

A. I kept little memorandums.

Q. Then tell me, please, what check or what account you paid for account of the firm outside of what you paid for traveling
788 expenses and other expenses to Europe before you got back, prior to the 17th of November, 1884?

A. What checks I paid out?

Q. In checks or otherwise.

A. What I paid out is in the books.

Q. Well, it don't appear in the books.

A. Well, if it don't appear in the books I don't remember any.

Q. So, then, the first amount that you paid out is that of November 17th, 1884?

A. Yes, sir.

Q. Then why were you writing letters as you did way back on the 7th of October, that you didn't get the money to pay the firm's debts from your partners?

A. Well, I paid it out for their account and I had received from Mr. Randazzo and Mr. Scalzo forty-five hundred dollars, and my five thousand dollars made ninety-five hundred dollars.

Q. Well, how is it that you only had on hand to the credit of the firm on the 15th of November, 1884, $5,968.41?

A. Well, that was the difference between the ninety-five hundred dollars received from Mr. Randazzo and Mr. Scalzo and my five thousand dollars less the expenses deducted.

Q. Then your five thousand dollars was put for the first time on the 15th of November, 1884?

789 A. Yes, sir; but my collaterals were sufficient. The books will show you.

Q. Is that the correct date?

A. Yes, sir.

Q. Didn't you say that you did not issue any money to the Bank of Barcelona for credit there?

A. We did, I believe.

Q. When did you rent an office—when you came back from Europe?

A. We had engaged an office before we left here, corner Front & Canal Sts., from Avendano Bros.

Q. When did the lease commence?

A. The 1st of October.

Q. Was it not the 1st of November?

A. The lease will speak for itself.

Q. Did you make any arrangements with the Bank of Barcelona by which it was to make shipments of fruit?

A. I didn't know the gentlemen; I only knew him by hear name.

Q. Well, what did you issue the letter of credit in their favor of $890.40 for?

A. That was for the first shipment made on the steamer Jason made by P. Scalzo endorsed over to us and endorsed over to the Bank of Barcelona.

Q. Who did that business?

A. Mr. Scalzo transacted the business that resulted in that shipment.

Q. You did not do it?

790 A. No, sir.

Q. I find from your check book that from the time that you opened your bank account to the 28th of January, 1885, you had deposited, all told, $15,311.83, and you had drawn checks for $12,810.18. What had you done in the meantime with all the money that you had received from the various shippers that came here and proceeds of sale of their fruit?

A. I deposited.

Q. Where?

A. In the bank.

Q. What were the proceeds of sale of the first cargo load that came in on the steamship Jason?

A. There was a balance to the creditors of the shippers.

Q. How much was it?

A. I don't remember.

Q. What did you do with the price realized from the sale of that fruit?

A. I went and got exchange and sent it to the shippers.

Q. Well, I see you paid out for freight and duty on the steamship

Jason over two thousand dollars, and you say there was money left over. After the sale of the fruit what did you do with the cash realized from this sale?

A. Well, we sold one hundred tons of brimstone that we didn't get the money for; got four months' note.

Q. When you got the note did you deposit it?

A. No, sir; I had to discount it.

791 Q. Who discounted it?

A. The Union National bank.

Q. Did you do it as soon as you got the note?

A. No, sir.

Q. How long afterwards?

A. A little over a month afterwards.

Q. Do you know the amount paid?

A. I don't remember.

Q. What did you do with the balance of the fruit that you received on the steamship Jason?

A. Sold it same as is customary—on thirty days' credit and some for cash. Of course, I had to take promissory notes at thirty days.

Q. Did you deposit those when you got them?

A. Yes, sir.

Q. Did you do that with every shipment?

A. No, sir.

Q. Why not?

A. Because sometimes we were short.

Q. Well, do you mean to say that from the time that you opened that bank account, on the 15th of November, 1884, to the time that yourself and your partners commenced their fuss, before the 28th of January, 1885, on which day you had balanced your accounts, that you had deposited in that bank everything that you had

792 received from these various sales and that you had received from your partners?

A. All moneys received were deposited.

Q. Then, I judge from this account, there was no money received, because the total amount deposited was a little over fifteen thousand dollars, and you have already sworn that you had already received from your partners ten thousand dollars, which extends the total amount of your deposit without regard to any shipments?

A. I never said any such thing. The capital of the firm was five thousand dollars each.

Q. And you say that you deposited that in bank?

A. Yes, sir.

Q. And you say that you deposited the proceeds of the sales of those cargoes in bank?

A. Yes, sir.

Q. And you deposited the fifteen thousand dollars in bank?

A. Yes, sir. As I said before, the fruit did not realize as much as the advances, and the balance always remained in Sicily, for which we had a bank account there, for which we have amounts due to the firm in Sicily of very near three thousand dollars.

Q. Now, I will take the account of the steamship Jason. The Jason appears to have sold her cargo for two sums—$1,226.70 and $—— for oranges (not carried out)—and you appear to have paid out for freight and duty two sums and expenses and commissions—$447.57 and $430.63—making, all told, $877.00. Now, the
793 first entry in your book appears to have been paid duties on the Jason $1,245.00 and freight on the Jason $760.30. You say there was a balance left over from the Jason because you had no advances. Now, we have principal paid out $2,000.00 for freight and duties, whereas your special account, on page 2, in the handwriting of Mr. Terni, I presume, shows freight and duties $870.00. How do you account for that discrepancy?

A. There was money paid out for freight on which we did not get a cent back. We got a note for that brimstone and almonds; so there was a balance due Mr. P. Scalzo after deducting our commissions.

Q. Now, you say you knew the books to be correct?

A. Yes, sir.

Q. And you knew the entries made by Terni. Now I will refer you to the book, on page 2, under the heading of Jason, and ask you whether all that is Terni's handwriting and whether it is correct.

(Witness looks at the book shown to him.)

A. It is the book-keeper's duty, and he is employed by all of us.

Q. Then you don't know whether it is correct or not?

A. No, sir; but I presume that it is correct.

Q. Do you know a firm by the name of Lagano & Pojero?

A. Yes, sir; by reputation.

Q. Did you ever write to them?

A. Yes, sir; once.

794 Q. Is the letter in your letter book?

A. I believe the letter was torn out.

Q. Now, then, you stated that you did not make any contracts with them?

A. I received a letter from them.

Q. Where is that letter?

A. Amongst the papers. It was not on business; it was a letter that Mr. Pojero had written, as he, being my godfather, christened me when I was a baby, and, after ascertaining I was at Palermo and did not come and pay a visit to him, he wrote a letter (I believe it is a personal letter) complaining that he felt slighted because I didn't go and pay him a visit. I immediately told Mr. Terni to write a letter to him on my behalf, telling him, as I had landed in Sicily, I was informed of the character of one of my partners——

Q. Never mind what you said in the letter. You then wrote a letter that was afterwards torn out of the letter book?

A. Yes, sir.

Q. And this letter you wrote to Lagano & Pojero?

A. Yes, sir.

Q. Had you any business transactions with them at all?

A. No, sir.

Q. And they didn't know your firm?
A. Perhaps they heard of it.

795 Mr. Benedict offers the copy of letter enclosed in an envelope, marked Exhibit "L," in evidence (copied at page 36 of this transcript.)

Redirect examination.

By Mr. HORNOR:

Q. Mr. Oteri, did you ever keep any books?
A. I never did.
Q. Do you know anything about book-keeping?
A. No, sir.

Note.

Mr. Joseph Oteri produces in evidence three checks, marked Exhibits "N, O, & P," called for by Mr. W. S. Benedict, counsel for complainants (copied at page 138 of this transcript).
Filed 4th March, 1887.

796 U. S. Circuit Court.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Testimony taken by consent at the law office of Mr. W. S. Benedict, No. 29 Camp street, on Tuesday, December 28th, 1886, and Thursday, December 30th, 1886, on behalf of defendant.

Present: Mr. W. S. Benedict, attorney for plaintiffs; Mr. Jos. P. Hornor, attorney for dedendant.

Testimony of Mr. Jos. Oteri (recalled), page 797.
" " " Hector Terni, page 798.
" " " Joseph Bein, " 812.
" " " Ben. Onorato, " 818.
" " " Jos. Oteri (recalled), page 819.

Exhibit "£ 6," page 825.

Reported by D. O. Day, stenographer.

797 Mr. JOSEPH OTERI (recalled), sworn on his own behalf, says:

By Mr. HORNOR:

Q. What is this book?
A. A kind of petty cash book.
Q. Well, of what transactions—transactions of Joseph Oteri & Co.?
A. Yes, sir.
Q. Who kept that book?

A. Mr. Hector Terni started it.
Q. Is any of it in your handwriting?
A. No, sir.
Q. Have you found this book since you last testified in this case?
A. Yes, sir; it was in the office.

Cross-examination.

By Mr. BENEDICT:

Q. Where did you find it?
A. In the office of C. A. Fish & Co. When I brought all the books from there I forgot to take that along with the balance.
Q. Had you looked for it before?
A. Well, I thought I had the whole lot of books together, and I omitted to take that.
798 Q. What has been written in it since this suit was brought?
A. Nothing concerning this matter—only some of my stevedore business.
Q. So far as it pertains to this matter, it commences on page 2 and ends on page 7. Is that correct?
A. Yes, sir.

Mr. HECTOR TERNI, being sworn on behalf of defendant, says:

By Mr. HORNOR:

Q. Mr. Terni, you have already testified that you were the clerk and book-keeper of the concern of Joseph Oteri & Co. and you went to Europe?
A. Yes, sir.
Q. After you went to Europe with the members of the firm and came back where was the office of the firm of Joseph Oteri & Co.?
A. I believe it was in Canal street.
Q. It was at the corner of Canal and Front streets?
A. Yes, sir; Canal and Front streets.
Q. When did you arrive in New Orleans from Europe?
A. I don't remember.
Q. Was Mr. Joseph Oteri with you, and did you both arrive here in New Orleans together?
A. Yes, sir.
799 Q. Did you immediately open the office?
A. Yes, sir.
Q. Was the office rented before you left New Orleans?
A. I think it was rented during the time that we were in New York by dispatch.
Q. The office was ready for you to go into when you came back?
A. Yes, sir.
Q. Were the books all bought?
A. No, sir; I believe we bought them afterwards.
Q. Then who kept the books?
A. I began to keep the books.
Q. In that office?

A. Yes, sir.
Q. Was Mr. Joseph Oteri there?
A. Yes, sir.
Q. Was he in the office every day
A. Yes, sir.
Q. Mr. Randazzo—was he in the office?
A. No, sir.
Q. He never came to the office?
A. Yes, sir. After while he went to the plantation on some orange business.
Q. Was any other member of the firm in the habit of visiting or staying in the office?
800 A. No, sir.
Q. Did anybody else besides Mr. Randazzo ever come to the office?
A. No, sir.
Q. Did Mr. Scalzo come to the office?
A. Yes, sir; sometimes.
Q. Did they ever look at the books?
A. I never saw them.
Q. You never saw them look at the books?
A. No, sir.
Q. Could they not have looked at the books if they had wanted to do it?
A. Yes, sir.
Q. Did ever any of these gentlemen—Mr. Scalzo, Mr. Randazzo or Mr. Di Cristina—write in the books?
A. I never saw them.
Q. Will you look at these books and state whether they are the books of Joseph Oteri & Co. in which you kept the accounts?
A. If I see them I can tell.
Q. Well, here they are. Look at them (the books being handed to witness).
A. This is the bank book of Joseph Oteri. It was never in my hands at all. Mr. Oteri kept the bank book himself.
Q. It is in your handwriting down to the bottom of page 5, in the book marked Exhibit H *t*."
A. Yes, sir.
801 Q. What book is this (witness being shown book marked Exhibit "I *t*")?
A. This is in my handwriting.
Q. That is all in your handwriting?
A. Yes, sir.
Q. Down to and including page No. 15?
A. Yes, sir.
Q. What book is that—what does it purport to be?
A. It purports to be a ledger.
Q. What book is this (witness being shown book marked Exhibit "K *t*")?
A. This is a check book of Joseph Oteri & Co. I suppose it was seldom or never in my hands.

Q. It is not in your handwriting?

A. No, sir; not, so far as I can remember.

Q. See if any part of it is in your handwriting. (Witness looks at book.)

A. Yes, sir; this is in my handwriting—fifteen dollars to me (witness referring to check No. 7).

Q. The margin of check No. 7 is in your handwriting?

A. Yes, sir; and No. 9 is in my handwriting, and also No. 10, No. 11, and Nos. 12 & 12, and no more.

Q. The debit side of the check book, opposite checks 7, 8, and 9, is in your handwriting?

A. Yes, sir.

802 Q. Look at this book marked Exhibit "L *t*," and state what it is.

A. The purpose of this book was to keep the petty cash in, but it was so often changed. You see, here is Mr. Oteri's handwriting. There is no writing by me, and here is writing by me. (Witness, pointing to the top of page No. 3, says the writing is his, and the lower part of the page by Mr. Oteri.)

Q. Mr. Oteri and you both kept the book together?

A. Yes, sir. You see, here is page 5; it is Mr. Oteri's handwriting, and here are two lines under the date of November 28th, 1884, that are written by me, and some other entries on this page 5.

Q. And you and Mr. Oteri kept this book together; sometimes you wrote in it and sometimes Mr. Oteri wrote in it?

A. Sometimes Mr. Oteri would get to the office sooner than I would, and he would write in it.

Q. Then you both wrote in it?

A. Yes, sir.

Q. Did you transfer the items in this book to any other book?

A. No, sir; it was impossible.

Q. Did you ever transfer the items in this book to any other book?

A. I cannot remember; may be some few.

Q. All those items marked with a double cross in pencil have been taken by you and put in some other book?

A. Yes, sir.

803 Q. Now, were the entries made by you in these books which you have examined correct entries?

A. Well, I suppose so. I told you they were changed every day. The items were so often changed that I could not exactly tell you. There was too many changes. There was no book-keeper who could keep a regular book.

A. Why not?

A. Because one day they would take this out and the next day take that out, and so many other things.

Q. Who said that?

A. Mr. Oteri.

Q. Did anybody else?

A. No, sir; nobody else. I never received any instructions from anybody else except Mr. Oteri.

Q. You never received any instructions from Mr. Randazzo?
A. No, sir.
Q. Did you ever receive any instructions from Mr. Scalzo?
A. No, sir.
Q. Did you ever receive any instructions from Mr. Di Cristina?
A. No, sir; I always considered Mr. Joseph Oteri to be my direct boss.
Q. Now, I want to ask you, do you know of any entries in those books in your handwriting that is not correct?
A. No, sir.

Cross-examination:

804 By Mr. BENEDICT:

Q. Mr. Terni, you have stated already in your examination about the trip to New York, then to Liverpool, and then to Sicily. Did you keep an account on that trip so as to show what expenses were paid?
A. I began to keep a little bit of an account when we were in New York, and afterwards Mr. Oteri kept the account, and when we came back here Mr. Oteri says: "Here is the balance of cash account," and he said. The balance is the expenses. I never kept any account.
Q. Now, do you know whether the amount that he told you to charge up as expenses were the actual expenses or whether they embraced all other kinds of things?
A. I know nothing about it. I never kept any accounts.
Q. Now, you went to New York, then to Liverpool, then to Sicily, and then back to New Orleans?
A. Yes, sir.
Q. Can you, from your recollection of the expenses of that trip, say what it would cost to pay one man what you did?
A. It is impossible. It depends how he travels.
Q. Well, the way you gentlemen traveled, what would gauge your expenses to be for four men?
805 A. If you will give me a pencil I will try to figure it up the best I can. (Witness figures on it and averages the amount to be about five hundred and fifty dollars—$550.00.)
Q. This average of yours is about the rate that you calculate your expenses were first class?
A. Yes, sir.
Q. Had you known Mr. Randazzo to be in any business in this city before he went into business with Mr. Joseph Oteri?
A. Yes, sir.
Q. Was he in the same line of business—importing fruit?
A. Yes, sir.
Q. What kind of business did he do?
A. He was an importer, and besides importer he was doing other business—speculating.
Q. Did he receive vessels consigned to his firm?
A. I believe one or two; I cannot remember.

Q. About the correspondence of that firm whilst you were there, who wrote the letters for the firm to the merchants in Sicily?

A. I wrote them.

Q. All that were written in your handwriting you copied in the letter-book?

A. Yes, sir.

806 Q. Who would sign the letters?

A. Mr. Joseph Oteri.

Q. Would he read the letters before he would sign them?

A. I would read them to Mr. Oteri.

Q. You read them correctly to Mr. Oteri?

A. Yes, sir.

Q. And he would sign them?

A. Yes, sir.

Q. Did Mr. Oteri say anything to you about having a wish to do the business for himself and to make his partners leave him?

A. That question has been asked me at another time, and I answered that when I arrived with Mr. Oteri in Sicily, on account of some objections on the other side, Mr. Oteri had formed an idea to dissolve the partnership when he came back.

Q. Well, did Mr. Oteri say anything to you here in New Orleans after he came back about his wish, before any consignments came, to do the business in his own name by himself and leave his partners out?

A. Yes, sir; we have done so.

Q. But — I wish to know is this: Did Mr. Oteri, after you came back to the city, say anything to you to show you that he wanted to do all the business in his own name and not do any more business with Mr. Randazzo or Mr. Scalzo?

807 A. Mr. Oteri said when he came back, for his own security he wanted to do the business in his own name, and we opened a letter of credit in his name for that purpose.

Q. Well, now, whilst you were with him did he change the business afterwards from his own name back again to the name of the firm, or had you gone before he changed it back to the name of the firm?

A. Well, sir, I don't remember; there were so many different things said. Once it was to dissolve the concern, and then again not to dissolve, and so many different things I don't remember.

Q. You could not tell?

A. No, sir; I know that when I left the office they were continually quarreling.

Q. Do you remember whether any fruit had come consigned to the firm or to Joseph Oteri & Co. by steamer before you went away from the firm?

A. Yes, sir; some consignments arrived.

Q. Then all that did arrive you put down in the book?

A. Yes, sir.

Q. Now, who would give you the memoranda of the figures to write out in the book?

A. To write what, sir?

Q. The expenses and the charges of how much was paid—who would tell you how much it was?

A. About the fruit?

808 Q. About everything.

A. About expenses and about travelling expenses Mr. Oteri told me.

Q. Well, about the fruit vessels?

A. That is natural thing that I know.

Q. You know the charges of the custom-house?

A. Yes, sir; I know the charges of the auctioneer, and I don't need Mr. Oteri to tell me that.

Q. Well, outside of those charges you did know who would give you the figures to enter in your book?

A. Mr. Oteri.

By Mr. HORNOR:

Q. Mr. Terni, I take this statement that you have made of the probable expenses of a man on this voyage that you made, which you have estimated to be ($550.00) five hundred and fifty dollars. You have put down—New Orleans to New York, sixty dollars; expenses in New York, fifteen dollars; New York to Liverpool, seventy-five dollars; expenses on board, ten dollars; Liverpool to London and to Sicily, one hundred dollars; Malta to London, one hundred dollars; Liverpool to New York, one hundred dollars; expenses in New York, thirty dollars; New York to New Orleans, sixty dollars; total ($550.00), five hundred and fifty dollars. Have you not left out anything there?

809 A. Oh, no.

Q. Were there no other expenses?

A. Well, you see I charge here about twenty-five dollars more. You see the ticket was about fifteen pounds sterling. I charge one hundred dollars. It was only seventy-five dollars.

Q. Ought you not to allow something here for your expenses in Liverpool and London when you first went there?

A. Well, I charge twenty-five dollars. You see it was only seventy-five dollars from Malta to London.

Q. How long did you stay in London and Liverpool—how many days?

A. I don't remember; Mr. Oteri must remember; I believe the same day we came back.

Q. Now, didn't you have some expenses in Sicily which are not put down here? How long were you in Sicily—how many days were you in Sicily?

A. I suppose about ten days.

Q. Ought you not to put something down for expenses there?

A. Well, I suppose about fifty dollars.

Q. Well, now, you did not allow anything here for expenses in St. Louis?

A. If you want me to make any particular account I take twenty-five dollars less here, and charge a little to each.

Q. How much was your passage from Liverpool to New York?

A. Fifteen pounds sterling.

Q. And then you had some expenses on board?

810 A. Yes, sir; I charged ten dollars besides the hundred dollars. That was for ten days going over.

Q. And then you include this hundred dollars coming back?

A. Yes, sir.

Q. Then you think that Mr. Oteri's expenses were five hundred and fifty dollars per man?

A. I don't know.

Q. Who paid the expenses for all four?

A. Only to a certain extent. I believe he paid for two or three to St. Louis, and from St. Louis to New York he paid for four. The conclusion was in New York. Mr. Oteri and myself—Mr. Oteri bought the ticket for Mr. Di Cristina and Scalzo to go direct to Sicily.

Q. Well, then, you don't know what Mr. Oteri did spend?

A. No, sir; it was none of my business.

Q. You did not see his account?

A. No, sir.

Q. Didn't Mr. Oteri travel first class everywhere?

A. We had first-class tickets.

Q. In whose handwriting is this letter (co-nsel referring to letter marked Exhibit "L," annexed to the testimony of Joseph Oteri)?

A. It is in my handwriting.

811 By Mr. BENEDICT:

Q. Mr. Terni, you were asked what were the expenses of Mr. Joseph Oteri outside of any ordinary expenses.

A. I don't know anything about this, sir.

Q. Did Mr. Oteri play poker?

A. I don't know.

Q. Did Mr. Oteri lose money on the steamship traveling, playing game?

A. I don't know, sir.

Q. Didn't Mr. Oteri put up his watch for poker debt?

A. Excuse me, sir; I traveled with Mr. Oteri as his clerk and not as a spy.

Q. Grant that. Didn't you play poker with him?

A. No, sir.

Q. Did you see him pawn his watch for poker debt while he was on that trip?

A. Well, I suppose it is true.

Q. Don't you know it is true?

A. Yes, sir; it is true.

NEW ORLEANS, *December 28th*, 1886.

The further taking of testimony in the foregoing entitled and numbered cause was continued until Thursday, December 30th, 1886, at 3 p. m.

812 NEW ORLEANS, *December 30th*, 1886.

The further taking of testimony in the case of Scalzo *et als. vs.* Joseph Oteri was this day resumed.

Present: Mr. W. S. Benedict, attorney for plaintiffs; Mr. Jos. P. Hornor, attorney for defendant.

Mr. JOSEPH BEIN, sworn on behalf of defendant, says:

By Mr. HORNOR:

Q. Mr. Bein, what is your business?
A. I am an accountant.
Q. You reside in New Orleans?
A. Yes, sir.
Q. How long have you been an accountant?
A. I have been an accountant for the last twenty years.
Q. Will you look at these books marked Exhibit "L 1," "L 2," and "L 3," and state what they are?
A. Book "L 1" is the cash book of Joseph Oteri & Co.; book "L 2" is the same, and book "L 3" is the same also. The three are cash book, journal, and ledger.
Q. In whose handwriting are these books?
A. Mine.
813 Q. You made them?
A. Yes, sir.
Q. From what source did you make them?
A. Copy of the old books.
Q. Exact copy of the old books?
A. Yes, sir.
Q. Who gave you the exact copy of the old books?
A. Mr. Joseph Oteri.
Q. Did he give you the old books?
A. Yes, sir.
Q. And you made them from the old books?
A. Yes, sir.
Q. Then these new books are exact copies of the old books?
A. Yes, sir.
Q. Show me the old books that they are exact copies of.

(Witness looks at the books.)

A. Book "H t" is one; Exhibit "L t" is another; Exhibit "K t" is another; Exhibit "I t" is another; Exhibit "L 4" is another; Exhibit "L 5" is another.
Q. That is all that you had?
A. Yes, sir.
Q. Now, what do you mean by saying that your set of books, journal, ledger, and cash book, are copies of the old books
814 of Joseph Oteri & Co.? Do you mean to say they are exact copies?
A. Not exact copies; but the only way we could straighten them up was to open a new set of books.

Q. And you made that new set of books exactly from the entries in the old books?

A. Yes, sir.

Q. Is there anything in those books that is not in the old books?

A. No, sir.

Q. Look at these Exhibits "A, B, C, and D" and state if they are in your handwriting.

A. Yes, sir; they are in my handwriting.

Q. Don't they show the correct condition of that set of new books that you have made?

A. Yes, sir.

Q. And then these are, as I understand, the result of that new set of books you have made?

A. Yes, sir.

Q. Do you know anything about the business of Joseph Oteri & Co. except what you gleaned from the books?

A. No, sir.

Q. You had nothing to do with it?

A. No, sir.

Q. What is your regular business now?

815 A. I am a book-keeper.

Q. For whom?

A. C. A. Fish & Co.

Q. For how long?

A. Three years.

Q. That is, about as long as that house is in existence?

A. Well, no; three years.

Q. Where were you before that time?

A. With C. H. Lawrence & Co.

Cross-examination.

By Mr. BENEDICT:

Q. Mr. Bein, please refer to your ledger as made by you from the old books and tell me the entire receipts from the steamship Coronillia. $1,847.45. Did that represent all that the cargo of that steamer sold for consigned to Joseph Oteri or Joseph Oteri & Co.?

A. Well, the books were so tangled up—that is the only way I could make it, was to open that new set of books—that is, everything exactly compared with the cash book and the old accounts. I don't know what cargoes were received, and I could not say what they were or anything of that kind.

Q. Then your entries are based solely upon what you found

816 in the old books and not by references to invoices, bills of lading, freights paid, custom-house duties paid, expenses and charges paid—solely from what you found in the old books?

A. Well, it is an exact copy of the old books.

Q. But from no other source than the old books?

A. No, sir.

Q. Does the same answer apply to the debit side of the entries against that steamship?

A. Yes, sir.

Q. Then any and all further information that you required or desired to make your new set of books from the old books you got from whom?

A. I had no information from any one. I made exact copies from the old books.

Q. Where anything in the old books was not clear to your mind as an accountant from whom did you seek your information?

A. Mr. Del Orto.

Q. Who was Mr. Del Orto?

A. He was a member of the firm of C. A. Fish & Co.

Q. What connection had Mr. Del Orto with Joseph Oteri & Co.?

A. He and I assisted to fix up those books.

Q. Assisted whom?

A. He assisted me.

817 Q. In fixing up the books, by whom and under whose directions and under whose supervisions did you fix up the books?

A. Mr. Oteri.

Q. Did you or Mr. Del Orto find anything in the old books that required explanation; and, if so, from whom did you ask information concerning the same?

A. From Mr. Oteri.

Q. There is no entry in any of those books that you could verify save by reference to the old books.

A. No, sir.

Q. By this I mean that you examined nothing except the old books and spoke with Mr. Joseph Oteri.

A. Yes, sir.

By Mr. HORNOR:

Q. Didn't you have any invoices or bills of lading or anything of that kind to examine in those books?

A. Mr. Del Orto did. He examined all those things himself in connection with the making up of this new set of books.

Q. In making up this set of books did you take any information that was not verified by Mr. Oteri?

A. No, sir.

818 Q. Then any information that you got from him was verified by entries in those old books?

A. Yes, sir,

Q. Now, some of these documents, like invoices, &c., were in the Italian language, were they not?

A. Yes, sir.

Q. Did you understand the Italian language?

A. No, sir; but Mr. Del Orto did.

Q. Mr. Del Orto assisted you with the Italian language?

A. Yes, sir.

Mr. B. ONORATO, sworn on behalf of defendant, says:

By Mr. HORNOR:

Q. Mr. Onorato, you were examined in this case some time ago—last spring, I think—and you testified in regard to a sale made for Joseph Oteri & Co. to John Zucca of some fruit, and you then testified "that you offered Mr. Oteri the money for the fruit, less one per cent. discount for cash." I want you to refresh your recollection in that matter and state whether it was one per cent.
819 you offered him or some other amount.

A. I believe it was one per cent.

Q. Mr. Oteri says it was five per cent.

A. I cannot positively say whether it was one per cent. or five per cent. And now that he recalls it to my mind, I believe it was five per cent., for the simple reason that one per cent. is the general discount allowed to the trade. I certainly would not have taken the risk at one per cent.

Q. You would have taken the risk at five per cent., but you would not have taken the risk at one per cent?

A. Yes, sir; because one per cent. is the amount allowed by the general importers.

Mr. JOSEPH OTERI (recalled) on his own behalf says:

By Mr. BENEDICT:

Q. Mr. Oteri, since the last taking of testimony in this case have you made up a statement of the expenses on the trip to Europe?

A. Yes, sir; an approximated one.

Q. Is that the best you can make up from your memory?

A. Yes, sir.

820 Q. Had you any data to make it up from except your memory?

A. No, sir; only I seen one bill in Malta which I paid—hotel bill.

Q. Will you bring that down and file it?

A. Yes, sir.

By Mr. BENEDICT: I offer the statement marked Exhibit "L 6" in evidence.

Cross-examination.

By Mr. HORNOR:

Q. Mr. Oteri, you didn't pay all the expenses both ways for each party?

A. Yes, sir.

Q. For each party?

A. Yes, sir; when they came back I asked what balance was due them. There were two of them at quarantine, and Mr. Scalzo called on me for what expenses he incurred at quarantine, and I paid them. They stayed fifteen days at quarantine at Gaita.

Q. What line of steamers did you take from New York to Liverpool?

A. The White Star line.

821 Q. Do you mean to say that they charge one hundred and twenty dollars for one first-class passage?

A. One hundred and ten dollars.

Q. Do you mean to say that they charge one hundred and ten dollars on the White Star line?

A. Yes, sir; first-class passage.

Q. Do you mean to say that it costs twenty-two dollars to go from Liverpool to London?

A. Yes, sir; four pounds fifteen or four pounds six.

Q. Now, Mr. Oteri, since the filing of the accounts "A, B, C, & D" with your answer in this case what amount of money have you received from any of the parties whom you say in those accounts were indebted to the so-called firm of Joseph Oteri & Co., from any person or every person?

A. Well, as I had an attorney employed to try to collect bills due the firm of Joseph Oteri & Co., in Sicily, I succeeded in making a settlement with G. Di Cristina and Mr. Gioe. Mr. Gioe settled in three-years' note, deducting some amount, which I don't remember. Mr. Bein has got a memoranda, and Mr. G. Di Cristina settled in five-years' note, deducting one-third of the amount.

Q. I desire to know definitely what amount in notes you have received from Mr. Gioe or in cash, if any, and the same as to Mr. G. Di Cristina.

822 A. Well, I have got a statement in my bank box.

Q. I call for it.

(Witness says it will be produced.)

Q. What did you do with the claim that you settled for as against M. Costerelli & Co.?

A. I abandoned it, as it was not worth fighting.

Q. What did you do with the alleged claim of R. Filliberto & Co.?

A. I had no claim against Filiberto.

Q. What did you do with the claim against Mr. Terni of $115.37?

A. I never claimed it; it is in *statuo quo*.

Q. What have you done with the alleged claim against John Zucca of $2,320.75?

A. He went into insolvency, and I have got his thirty-days' note. If there was any way of getting the money I would do it with pleasure.

By Mr. HORNOR: I offer the proceedings of the insolvency of John Zucca in the civil district court in evidence.

By Mr. BENEDICT:

Q. Mr. Oteri, do you insist that you paid V. Scalzo one thousand and twenty-six & $\frac{93}{100}$ dollars, as shown by your account filed with your answer?

823 A. I paid him a thousand dollars and a hundred pounds. I endorsed it over to him, and there was some money paid him in Palermo at the Hotel De France.

Q. Then say yes to my question.

A. Yes, sir.

Q. And in the same manner you paid to Randazzo and Di Cristina $1,248.75?

A. Yes, sir; I paid it to G. Di Cristina, twelve hundred and some odd dollars, making twelve hundred and fifty dollars, and the balance young Di Cristina had.

Q. Then your two entries as to Randazza and Di Cristina and Scalzo upon the accounts you have filed in this case in connection with your answer are true and correct?

A. Yes, sir.

Q. Neither more nor less?

A. A few cents more or less, but the accounts are correct.

By Mr. HORNOR:

Q. About the expenses of this trip to Europe—you paid the expenses of all four?

A. Yes, sir; the whole four.

Q. How did you pay the expenses of this trip?

A. We went direct to Palermo. I bought tickets at St.

824 Louis on the steamer for them to go direct to Palermo.

Q. You paid the money yourself?

A. Yes, sir; I paid the passage for the four of us, and then we changed two for which we changed our route.

A. Did you pay their passage back again?

A. In coming back to Palermo Mr. Scalzo claimed some money that he had spent at Gaita, and he wanted some money to go and visit his family, and when Mr. Scalzo came back he brought a statement and I paid him every cent.

Q. Where is that statement?

A. I could not find it.

Q. Have you searched for it?

A. Yes, sir.

Q. Did he tell it to you in writing?

A. Yes, sir; on a little piece of paper.

Q. What has become of it?

A. He had it; we then figured up all the expenses, and Mr. Hector Terni put it down in the book with the consent of all the parties, and they all remarked that it was a very economical travel, and it was put down in the books then and is there now. It was made before five of us—Mr. Di Cristina, Mr. Scalzo, Mr. Randazzo, Mr. Terni, and myself—and we all remarked, "Gentlemen, that was a very economical travel."

825 By Mr. BENEDICT:

Q. Both Mr. Randazzo and Mr. Scalzo were present when that entry was made?

A. Yes, sir; the five of us.

By Mr. HORNOR:

Q. Was that your first trip to Sicily or had you been there before?

A. It was my first trip.

Q. Had you ever traveled anywhere in Europe before?
A. I traveled in Liverpool once or twice. That is in England.
Q. Not beyond that?
A. No, sir; if I wanted to deprive myself I could have made the trip for less money—if I traveled like an emigrant.

"L. 6."

Approximated Cost of of *Travelling.*

New Orleans to St. Louis, including sleeper & board		$35 00
St. Louis to New York,	do.	40 00
Expenses in New York		12 00
New York to Liverpool		120 00
Liverpool to London		22 00
London to Malta		120 00
826 Expenses at Malta		20 00
Malta to Palermo		30 00
Expenses at Palermo, 12 days		50 00
		$449 00

This includes travelling for three months, 1st class, carriage hire, and incidental expenses, one way.

Round trip for one person ---------- $898 00

Filed 4th March, 1887.

827 *Transcript of Record in State of Ohio vs. V. Scalzo.*

The Police Court of the City — Cincinnati.

STATE OF OHIO
vs.
V. SCALZO. } No. 4797.

Be it remembered that on the 9th day of July, A. D. 1877, being one of the days of the July term, 1877, the following entry was made on the journal of the said court:

STATE OF OHIO
vs.
V. SCALZO. } No. 4797. Charge, Rape.

This cause is continued to July 11th, A. D. 1877, and the court do order that the witness Mary Meyer be held in the sum of one hundred dollars to appear on that day.

STATE OF OHIO
vs.
V. SCALZO. } No. 4797. Charge, Rape.

This cause is continued to July 13th, A. D. 1877.

828 STATE OF OHIO } No. 4797. Charge, Rape; changed to Assault with Intent to Rape.
vs.
V. SCALZO. }

This cause is continued to July 14th, A. D. 1877, and it is further ordered that the witnesses Mary Maher and Annie Duffield be held to appear on that day.

STATE OF OHIO } No. 4797. Charge, Assault, with Intent to Rape.
vs.
V. SCALZO. }

The defendant waived examination; and thereupon the court do order that he be held in the sum of five hundred dollars to answer before the court of common pleas.
Bail given.

I, Emil Rehse, clerk of the police court of Cincinnati, do hereby certify that the foregoing is a true transcript of the proceedings had before said court.
Given under my hand and the seal of said court this 2nd day of February, A. D. 1887.

829 (Signed) EMIL REHSE, *Clerk*,
[SEAL.] By CHAS. H. BEHLE, *Deputy*.

I, John P. Murphy, acting judge of the police court of Cincinnati, do hereby certify that Emil Rehse, whose name is to the above transcript, is the clerk of the said court, and that Charles H. Behle is one of his deputy clerks of the said court, with power to sign said transcript in the manner therein signed.
Given under my hand and the seal of the said court this 11th day of February, 1887.

[SEAL.] (Signed) JOHN P. MURPHY,
Acting Judge, Police Court.

This is to certify that P. Murphy is the acting judge of the police court of Cincinnati, Ohio, and was such acting judge of said court at the time of the signing of the above certificate.

[SEAL.] (Signed) EMIL REHSE,
Clerk, Police Court.

830 CINCINNATI, *Feb'y* 11, 1887.

This is to certify that Mr. Emil Rehse is clerk of the police court of the city of Cincinnati.

[SEAL.] EDWIN HENDERSON, *City Clerk*.

Filed 4 March, 1887.

831 *Master's Report. Filed May* 18, 1887.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

To the hon. the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The master to whom the above cause was referred with respect reports—

That the record shows that a partnership was entered into, to take effect on 1st July, 1884, between the firm of Randazzo & Di Christina, Vincento Scalzo, and Joseph Oteri, under the style of Joseph Oteri & Co., to carry on a commission business in the importation and sale of fruits from Europe.

The act of partnership stipulated, among other things:

"1." That the business should be conducted under the name of Joseph Oteri & Co.

"2." That the capital should be $15,000, and be contributed by three partners in equal shares; that the firm should exist for two years unless sooner dissolved by mutual consent; that if additional capital should be required Oteri might furnish it if he thought proper to do so, and in such event he should be entitled to charge eight per cent. per annum interest thereon.

"3." That Joseph Oteri should be the manager of the firm; that he should have the exclusive control and direction of its affairs, the exclusive right of signing all obligations, and in case any other of the partners gave orders the interest of such partner in the
832 firm should cease.

"4." That Oteri should be at liberty to delegate his power.

"5." That books should be kept and all transactions be entered daily therein; that the books should be open to the inspection of the partners; that trial balances should be taken monthly and a final balance at the end of the year.

"6." That profits and losses should be shared equally; that A. Di Christina, of the partnership firm of Randazzo and Di Christina, should be allowed two per cent. on the net yearly profits as an extra compensation for services to be rendered.

On the 11th June, 1885, Vincento Scalzo and Randazzo & Di Christina filed their bill of complaint against their copartner, Joseph Oteri, charging him with various acts to their prejudice in violation of the articles of copartnership and asked that the partnership be dissolved as if it had never been made; that Oteri be required to deposit in court the $15,000 capital of the firm, and such other sum as he might hold as profits from the business or for the use of the capital; that an account of the business of the firm be taken; that its liabilities be paid and be charged against Oteri, and that the share of the capital contributed by said complainants be restored to them, with interest.

833 Further, the bill alleges damages arising from defamation of complainants' characters by Oteri and from his having for a time dropped the partnership name and conducted the business in his own.

The master understands that the questions of damage are reserved for future action, and that he is now to deal only with those relating to the partnership.

After a careful examination of the voluminous testimony the master submits the findings of fact and the conclusions to which he has come:

"1." Some time after the formation of the partnership Joseph Oteri, in company with his partners, Vincento Scalzo & Di Christina, and their clerk and book-keeper, H. Terni, went to Europe in the business interest of the firm. Joseph Oteri paid the expenses of the four there and back. On their return, on their meeting in this city, the following entry was made in the cash book of the firm by Terni under direction of Joseph Oteri:

By expense—

1884, Oct. 1.	By travelling expense, fares, and etc., paid by J. Oteri		1,888 82
"	"	travelling expense, fares, and etc., paid by V. Scalzo	259 50
"	"	travelling expense, fares, and etc., paid by A. Di Christina	28 60
"	"	travelling expense, fares, and etc., paid by V. Scalzo	252 00
"	"	travelling expense, fares, and etc., paid by A. Di Christina in Palermo	109 40
			$2,538 32

834 Complainants contend that this is an overcharge, and that the whole cost of their journey to and fro could not have exceeded more than from $1,200 to $1,600. Oteri swears to the correctness of his statement, and says the expenses were figured up and entered in the presence of Scalzo, Randazzo, and Di Christina; that they all then assented to the correctness and concurred in saying it was a very economical trip.

Prior to the institution of this suit no objection appears to have been made to the charge, and since then nothing more definite than rough estimates have been offered as proof of error.

The clerk, Terni, who is a disinterested party, in his testimony estimates the expense for the four at $2,200, and Scalzo's estimate of the items, in so far as he recollects them, aggregates them from 1,200 to 1,600 dol.

The definite and circumstantial testimony of Oteri on this subject is entitled to more weight than the later and loose estimates of others. The charge of $2,538.32 is allowed.

"2." That at the time of the departure for Europe Scalzo had paid, on account of his share of the capital, $2,000, and Randazzo and Di Christina had paid $2,500.

"3." That Oteri while in Europe made business arrangements in the interest of the firm.

"4." That Vincento Scalzo remained in Europe for some time after the departure of Oteri for home.

835 Scalzo while in Europe had no right to make contracts for the firm, nor, indeed, does he claim it. See his testimony, p. 7. Oteri as the sole manager had the undoubted right to repudiate and to refuse to participate in any contract or business arrangement which may have been made or entered into by any of his partners. That he did so is no just ground of complaint. The act of partnership goes further, and provided that should any of the other partners give orders on part of the firm the interest of such partner in the firm shall cease.

"5." That some time after Scalzo's return from Europe near the middle of September, as near as the master can determine, Scalzo and Randazzo & Di Christina paid the balance due by them on the capital of the firm, viz., Scalzo $3,000 and Randazzo & Di Christina $2,500.

"6." That the books of the firm were not kept in strictly mercantile manner.

"7." That Oteri did for a time after the formation of the partnership and before the 14th November, 1884, drop the name of the firm and carry on the business in his own name.

"8." That Oteri did not furnish his copartners monthly trial balances.

"9." That on the 14th November, 1884, both Terni, the bookkeeper, & A. Di Christina, the partner of Randazzo, wrote, with the approval of Oteri, to their correspondents in Europe that all the troubles between the members of the firm of Joseph Oteri & Co. had been adjusted; that Vincento Scalzo and Randazzo and

836 Di Christina had paid in their share of the capital, and that the business would thereafter be conducted in the firm's name.

The facts stated in the last five proceeding sections show violation of the act of partnership by Joseph Oteri in relation to the books, the non-rendition of the monthly statements, and in conducting the business in his individual name.

In explanation he states that he was compelled in the interest of the firm and for his own protection to carry on the business in his individual name by a number of reasons, and principally by the failure of his copartners to make timely payment of their share of the capital.

The facts stated in those sections also show a violation of the partnership obligations on part of the partners, Vincento Scalzo and Randazzo and Di Christina, in not completing until November the payment of their share of capital which was due in July.

The facts therein stated also show that afterwards, to wit, on the 14th of Nov., 1884, all the acts *therefore* committed or omitted by any of the partners in violation of the partnership agreement were mutually condoned, and that harmony was restored between the

members of the firm, A. Di Christina himself actively aiding in making the announcement.

Complainants seek to avoid the effect of that adjustment on
837 the ground that they were ignorant of the manner in which the business had theretofore been conducted; that one of the partners, Randazzo, could neither read nor write: that the other, Scalzo, was absent in St. Louis, and that Di Christina, the one who had every opportunity to acquaint himself with the books and with the general management of the business, was a boy of weak mind, and therefore easily influenced and controlled by Oteri.

But we must remember that this Di Christina is one of the parties litigant, and that he appears without the aid of a curator as a person competent to stand in judgment. True, his own particular partner, Randazzo, is unable to read and write, and the other partner, Scalzo, resides in St. Louis, and it was probably the influence of these facts that induced them to insist in their partnership agreement for greater security, the cause requiring Oteri to employ Di Christina in the business, and the further stipulation that he should pay him two per cent. on the net earnings as an extra compensation for services to be rendered by him attests their appreciation of Di Christina's capacity for usefulness.

Again, Scalzo says that some time after his return from Europe Oteri expressed to him his dissatisfaction at the outcome of their business; said to him, There is no money in it, and expressed his wish to settle up and dissolve.

Scalzo remonstrated, reminding him of the heavy expense
838 they had incurred by their European tour, and told him they could not afford to stop. Terni testifies that Randazzo and Scalzo were sometimes in the office. He is not aware that they ever examined the books, but that they could have done so if they had desired.

Of things that had already transpired they certainly knew them. What they compl-in of now — that Oteri had rendered them no monthly statements.

They had both been long engaged in this particular branch of mercantile business, and it must be assumed that they were well acquainted with the manner in which the security of the partners required it should be conducted.

There is no evidence that any demand for investigation was made or that any interest in the condition of their affairs was manifested.

How is this omission of attention to their interests to be accounted for? According to their complaint, enough had occurred to arouse inquiry, if not suspicion. They could then have made with Oteri the issue which, at a later day, led to the institution of this suit.

In the opinion of the master, all subjects which gave *use* to complainant prior to 14 Nov., 1884, were amicably adjusted on that day, and should be considered settled.

It is o-mitted in complainants' brief that Oteri was amply able
839 to have himself contributed the entire capital of $15,000, and the suggestion is made that after conducting the business for some time in his own name and finding it to be unprofitable he re-

sumed the use of the partnership name for the purpose of throwing a portion of the loss on his copartners; but, as Oteri is also credited with much shrewdness, it is unreasonable to suppose that he imagined he could dissolve the partnership at will and escape being called to account for the profits he may have realized by such a devise. Complainants may be open to a like imputation of repudiating the contract to avoid the loss.

As sole manager Oteri had the right to fix at discretion the amount of the advances to be allowed on consignments to the firm, and he had the right to refuse credit to all purchasers, even to his partners for fruits sold by his direction.

The refusal might be ungracious, but it was clearly within the power conf*irm*ed on him.

It is further complained that Oteri did not promptly pay in his share of the capital.

Assuming that to be true, in view of the admission that he was at all times able to pay the whole capital of the firm, it seems of no practical moment whether he ever made a formal deposit of the amount with himself or not, as no damage is shown to have ensued from his failure to do so. The money was in his possession, and the accounts which he has presented embrace the full sum.

The evidence does not show that Oteri ever profited to the
840 exclusion of his partners nor an instance in which a loss of money to the firm resulted from an unauthorized act of any of the partners.

The master is of opinion that all the losses are attributed to the depressed condition of the fruit market at the time of the arrival of the consignments and not to the acts of any of the partners.

The books before the court were made up from the old ones and from such memoranda as were accessible by gentlemen who were disinterested and who were equally the friends of all the partners.

Their qualification for the task will be admitted, and the time and study they devoted to it entitles the results of their work to confidence.

The master recommends that it be accepted as correct.

The settlement lately effected by Oteri of the claims against Gioe and G. Di Christina, of Sicily, will require some modification of the statements.

Since the order of reference addition- evidence has been offered on part of the defendant, but the master did not feel at liberty to receive or consider it, as the evidence on both sides had been closed.

In the opinion of the master, the partnership should be considered as continuing uninterrupted from 1st July, 1884, to the 2nd Feb'y, 1885, at which date Oteri was called to answer in the State court the suit of his copartners for its dissolution; that from the 2nd Feb'y, 1885, Oteri had no authority to enter into any new engagements for or on behalf of his copartners, but it remained
841 his duty to conduct to conclusion all obligations and contracts made or commenced before that date.

The evidence has satisfied the master that no amicable adjustment of this partnership could *ir* would have been made by the

partners, and that a suit was necessary to settle their affairs. He therefore recommends that the costs of the suit be divided equally between the three.

The master asks that the court will allow him a reasonable compensation for his services herein.

(Signed) J. W. GURLEY, *Master.*

Addenda.

The exception- taken by the complainants are general and go to the whole report. The master has attantively examined them, as well as the testimony of the witnesses referred to.

The pleadings claim no relief based on the mental incapacity of Di Christina. If his condition is such as to free him from responsibility, then it is submitted the suit must abate from defect of parties.

In regard to the books, the case presented does not justify the conclusion that the partnership should be treated as void from the begin-ing, and that complainants' capital be returned with interest. If this view is correct, then the best data for a settlement that can be found should be accepted. Undoubtedly, a more complete rec
ord of the business transactions might have been kept, but
842 such as was made should not for that reason be rejected if from it reasonable certainty can be arrived at.

The condition and character of the parties should not be overlooked.

Oteri could neither read nor write the Italian language.

Scalzo was versed in the Italian, but was ignorant of the English.

Randazzo, whose testimony shows him to be a man of great natural shrewdness, appears to speak both languages, but could neither read nor write either. His equality, however, with his partners was secured by the stipulation that his own partner, Di Christina, should be employed in the office.

The selection of Terni as book-keeper was satisfactory to all. He kept the books in the Italian language, the language of Scalzo and Di Christina, and he swears that all the entries he made in them are correct. Oteri was no book-keeper, and had he been he could not have supervised books written in a language of which he was ignorant.

On the eve of suit for the dissolution Oteri delivered all the books and papers to Mr. Luigi Del'Orto and requested him to prepare a statement of the accounts. Del'Orto is an Italian and familiar with the language; a fruit merchant, a book-keeper, and accountant; a friend of all the partners, and familiar with the character of business in which they had been engaged. Assisted by
Mr. Bein, an accountant of twenty years' experience, he as-
843 sumed the task, and of the books and his work in substance says: The new books were from the old ones. From them I journalized the items. When I could not understand, Oteri would explain how and why the transaction had occurred, but the figures in no way differ. I did the work as a favor and a disinterested per-

son; received no compensation; all the partners are friends of mine. I thought I would help one as well as the other by doing the work. I made the entries by first looking at the old books, and then I looked up the voucher if they were there. If I could find no voucher, and the entry in the old books was doubtful, the correspondence would explain in some way, and then the accounts current that would come from Sicily, and even the acknowledgement that the accounts current were correct. My interference in this case was in good faith, and was for the benefit of all the parties concerned, as I thought, although Oteri had requested me to do this work.

The statements of Del Orto in this abstract of his testimony are corroborated by Mr. Bein.

The master was in error in refusing to receive in evidence the bank book procured by the defendant after the submission of the cause. See stipulation appended to deposition of Scalzo, p. 5.

The master finds no reason to change his report.

Respectfully submitted,

(Signed) J. W. GURLEY, *Master.*

844 U. S. Circuit Court.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Exceptions Before Master. Filed May 18th, 1887.

1. There is an error in concluding that Joseph Oteri, as general manager of the firm, did not delegate authority to his copartners whilst in Sicily to make contracts on behalf of the firm—

For this:

a. Joseph Oteri was entirely unknown and his copartners were well known on that island.

And it is established that under their reputation and private or business connection with the various parties the affairs of the contemplated copartnership commenced at that point.

b. In your having concluded that the oath of Joseph Oteri was entirely to your weight and that of his copartners, in whom he placed confidence, and that of the book-keeper, in whom mutual confidence had been placed.

And as against the sworn statements of five or more witnesses in Sicily as to whom Joseph Oteri made certain statements, which are positively and unequivocally denied by each of the five.

NOTE.—In regard to this see the statement made by Scalzo himself in the testimony taken by Langford, p. 7. J. W. G., master.

845 Therefore, it being in the ordinary expectation of litigation established that the word of Joseph Oteri has been proven untrue, each and every fact and circumstance should be viewed with suspicion and distrust when made or uttered by him and not viewed and weighed as entitled to credence and allowed as true, granted as true by your honor in a case in equity.

2. We except to your report as to the matter of the books, for the following reasons:

a. The matters of the firm were not daily entered therein, and the first entry which appears is of a date many months subsequent to the payment in part of the capital by the co-partners, and then such entries so based upon the verbal statements of the defendant, against which statements we urge the points set forth in our first point of exception.

3. We complain for error of the allowance of $2,538.32 as travelling expenses.

In verifying our complaint we refer to the testimony of complainants and of Terni, the mutual friend.

[On margin in red ink:] Terni estimates the expenses at $2,200. See his testimony, p. 7. The maximum of Scalzo's estimated items of expense am't to $2,400 for the four persons, viz., $20 + 90 + 100 + 200. See testimony, p. 2 *et seq.* See also other testimony of Scalzo, taken 14 May, 1886.

We refer to our averment on the first point of exception as to the weight necessary to be allowed the testimony of defendant. The oath of Oteri that his co-partners and others consented to the correctness of the charge is denied by them, and hence is of no weight and surely under the direct facts of actual expenses. It was and is impossible to aggregate the amount charged by the defendant for travelling expenses, unless there be included losses and ex-
846 penses incurred by defendant in gaming or other pleasures of the trip.

[On margin in red ink:] Is the partnership, therefore, to be considered as never having existed?

4. As you have found the books were not properly kept by the act of copartnership.

5. As you have found that monthly trial balances were not furnished the copartners, it is immaterial whether the copartners, one of whom was unable to read or write and the other absent, placed the defendant in default thereof. His duties under the extraordinary powers which you have granted him was to have rendered such accounts from books properly kept, and, failing to do so, his simple oath to the correctness of such books and balances, unsupported by the vouchers which he could have had and which he could have produced, is entirely unsufficient to justify the accounts which he rendered from his books, made mainly, as shown by the uncontradicted evidence produced by himself, upon his own *ipse dixit.*

Which of the items are shown to be false? Is not the weight of evidence in favor of their correctness?

6. That there is error in concluding that from and after a time about the middle of September, 1884, when, as is found, the defendant ceased to do business for account of firm and carried on the business in his individual name, and that thereby and because subsequently thereto for a short time and without knowledge thereof

the copartnership was again conducted amicably until the complainants ascertained what had been going on (between September and November), that they should be bound by the acts of Joseph Oteri in the meantime.

This was an active default on the part of defendant, and
847 is so charged, and, not having been shown to have come to the knowledge of complainants until Feb'y, 1885, the complainant herein is verified by the finding you have made and justifies the complainant herein for a return of the capital advanced intact.

It is admitted by you that the defendant did not put up his own capital, as required by the articles of copartnership, but it is urged by you in examination that he was worth the entire capital individually.

[On the margin in red ink:] What of the letter of credit obtained by Oteri from the Union bank?

That reason is not sound in law, as V. Scalzo, another of the copartners, was also worth the entire amount of the capital of the firm.

[On the margin in red ink:] Oteri held his own and his partner's money on deposit.

No demand was made for the additional capital until a time subsequent to the return of the copartners from Sicily, when the same was promptly furnished by the copartners; but even up to that time and subsequently the defendant did not furnish his share of the capital, but had individually used the money by the partners for the capital for his own benefit and for his own interest, and subsequent to February, 1885, withdrew the balance of capital from the bank where the partnership funds had been by him placed, and the same may now be an entire loss to complainant, and interest is due thereon from that date, and there was therefore error in granting to defendant good faith, honor, honesty, fair dealing, or verity of statements.

True if anything is due to them.

There was likewise error in this respect in the conclusion you have reached that outside of the testimony of the copartners
848 (complainants) the testimony of five disinterested witnesses in Sicily who made their contract with Joseph Oteri should be entirely ignored, not passed upon, and credit to be given to Joseph Oteri, as against the combined evidence of seven witnesses.

Testimony from Sicily on what subject.

7. The reason given by Joseph Oteri for carrying on the business in his individual name after his return from Sicily, being on account of the failure of his copartner, being unable to make payment at the time of their capital, is not worthy of your attention.

To that date the complainants had furnished more capital than he had furnished.

He had drawn that capital as he had *saw* fit, not in the line of business of the firm.

Not entered it on any of the minutes of the books.

Not shown to be in connection with the business of the firm.

No notices had been given by him to his copartners to furnish the balance of their capital until on or about the 14th of November, when it was furnished.

At that time and even subsequent to that time he had not himself furnished his proportion of capital.

So his reasons are unworthy of your attention.

8. The fact that on the 14th of November the copartners agreed to act in harmony must be taken in connection with the knowledge afforded the copartners at that time of the acts of defendant.

And you have erred in concluding that the acts before that
849 time committed or omitted by Oteri were known to the complainants.

The contrary appears as they were not aware until the later part of January or begin-ing of February, 1885, when they ascertained by accident or incident *where* their copartners had done; they then determined upon an investigation of his acts.

So the conclusion of condonation is erroneous.

The fact of faith being placed in Oteri by the copartners and their failure to examine the books themselves in ordinary commercial business does not warrant a conclusion that the fraud or bad faith of the defendant shall result in a benefit to himself and injury to his copartners when he fails to produce the proper books.

When he fails to produce any vouchers for entries in his books, and where he seeks, after the evidence in the case has been closed, to produce vouchers (not shown to have been out of his possession), which he was called upon to produce during the trial of the case in their entirety.

NOTE.—The master finds that he erred in refusing to consider the new evidence offered by the defendant. See stipulation annexed to testimony of Scalzo, p. 5.

Surely some different view from that you have adopted must suggest itself to your mind relative to such matters.

9. You are in error in concluding that all settlements prior to November 11, 1884, were amicably adjusted.

That conclusion can only be reached by showing knowledge in the complainants in the acts done and had prior to that time,
850 and the truth is that such knowledge did not come to the complainants until the later part of January, 1885.

See Compl'ts' Brief A, p. 1. You are in error in concluding that complainants say defendant sought to avoid losses which he found would be inevitable by resuming the copartnership in November, 1884, in concluding had there been profits the complainants would have availed themselves thereof for the manifest reason that so far as complainants are concerned there is no imputation as against their good faith and fair dealing.

For the reason that the bad faith and double dealing of the defendant is amply established.

For the reason that no one should be permitted to profit by his own wrongs.

[On the margin in red ink :] It is clear that no profits have been made.

For the reason the complainants were in ignorance of the double dealing and bad faith of the defendant until they brought their action in the State court.

In other words, it seems from the finding of the facts by you in this—

a. That proper books were not kept.

b. Proper entries were not made.

c. Vouchers were not produced.

d. Monthly balances were not given.

e. Defendant repudiated the partnership and carried it on his own name.

f. He did not tell his copartners what he had done in
851 November, 1884, when he caused them to act with him.

g. They did not ascertain it until the end of January, 1885.

h. They then repudiated his acts.

That they are in fault and must suffer from his acts without any complaint against them, verbally or in writing, or by way of testimony and he must benefit by his violation of the articles of copartnership and his own misdeeds.

Are not these matters to be more carefully weighed?

10. There is error in taking the books made from the old ones as correct.

There is no dispute the new books were correctly copied from the old ones.

The new books depend upon the old books for their entries.

The old books depend entirely upon the assertions, statements, and testimony of Joseph Oteri, the defendant, for their verity.

An examination of the vouchers produced by
Which ones? the defendant concerning the entries on those books show that they are false and untrue.

The vouchers produced does not indicate or show but a slight portion of the charge made upon these books as having been paid.

If, as according to the articles of partnership, Joseph Oteri was the active manager of the concern, as he has been viewed by you in this matter, it was the more incumbent upon him that an ignorant
852 resident partner and an absent partner and a weak-minded partner, who was clerk, to show before a court or master a clean hand, a clean set of books, a proper conduct of his business, and adequate vouchers for each and every expenditure, failing to show he had advanced his own capital at the proper time and place.

Failing to show he produced proper vouchers when called for.

Producing vouchers which he thought would be beneficial to — after the evidence had closed, and no doubt being in possession of other facts and circumstances in connection with the case. We may

well ask your honor — you have concluded that books made up upon his evidence alone, upon entries dictated by him, are to be regarded as true under such circumstances.

11. We agree with your honor in your concluding opinion, that if he held that the partnership should not be regarded as void from the beginning, or the acts of defendants as voidable from about the middle of September, 1884, or as renewed on the 14th November, 1884, that at all events it concluded on the 2nd of February, 1885.

But we maintain the following proposition, and ask your consideration thereof before presenting your report to the court:

1. That all parties were in good faith when the act of copartnership was passed, and that each advance was made they deemed necessary at that time, and to subjecting the firm to the ex-
853 pense of the trip to Sicily.

2. There is no evidence to show that at that time the defendant was acting in any way in bad faith; but there is evidence to show, and it is conclusive in its nature, that a few days after the arrival of the parties in Sicily the bad faith was evinced and shown, and it therefore follows that you should hold whether or not such bad faith tended to relieve the complainants from any obligations in the premises and imposed upon the defendant the obligation of returning the capital they advanced prior to that time.

3. That the additional evidence of the bad faith of defendant, without application to his copartners for their additional capital, without advancing his own capital, to repudiate the firm and to do business for two months in his individual name on contracts made for the firm and without the knowledge of his copartners, justifies their action to recover their capital.

4. That the acts of defendant thereafter in calling on his copartners for their additional capital, concealing from them that he had conducted business of the firm contracts in his individual name, had reviled them, libelled their names and character by letter, and slandered them personally, also justifies their act for the return of their capital with interest.

5. That his acts as above set forth, his knowledge on or about the 14th November of losses likely to occur, justifies the conclu-
854 sion of his call upon his copartners for the balance of their capital to relieve himself from the entire loss which his previous acts had entailed upon him, and they should not be held liable therefor, they being kept in ignorance of such acts until about the end of January, 1885.

6. That knowledge coming to them at that time of such acts—such bad faith on the part of the defendant—justifies their proceeding in dissolving the firm and claiming the return of their money invested therein.

7. That although general manager of the firm, defendant was not justified in violating an agreement he had made with his copartners, who learned in that business in advancing upon shipments an amount in excess of what was agreed upon, he being ignorant of such business, and his pretended ignorance of his native tongue, which he speaks with the fluency of a native, but pretends he is

unable to read and write, being a perfect scholar as well in that as in the English language.

8. We submit you have erred in disregarding the testimony of Allessi, Morano, Scalzo, and Terni that there was no business done except the trip to Sicily, and no money was required except for that trip until the return of Oteri, in October; that there was no necessity for any further funds being furnished by any of the partners; that from the testimony of those witnesses and those in Sicily it is plainly apparent that the object of Oteri (not made known to his copartners) was, as soon as he returned, to conduct the business in his own interest and benefit, and that his resort of compulsion to his copartners to put up the balance of their capital without putting up any more on his own behalf was to annul the firm business and conduct it for his own behalf.

855

9. That the testimony of young Di Christina, a boy, inexperienced, was not given *a* consideration of his want of proper capacity (not amounting to a cause which would authorize another to act for him); his acts cannot be regarded in the light of testimony given in the case.

10. We submit you have erred in charging to Randazzo's personal account the amount of money which Oteri, the defendant, himself personally gave to R. Di Christina, the elder, in Palermo, for account of the firm, so testified by said Oteri, so testified by said elder Di Christina, and for which said Joseph Oteri holds the receipt from said R. Di Christina, Sr., for account of the firm, and yet seeks to charge and charges his partner-, Randazzo & Di Christina, with said sum, although they themselves could not in any event realize personally upon said receipt or upon said contract.

We therefore respectfully submit these views to your honor, that you may reconsider the conclusions which you have reached in your report, to the end that justice be done at all events.

Respectfully submitted.

(Signed) W. S. BENEDICT, *Att'y.*

(The notes in red ink written in the margin of the above exceptions are memoranda made by the special master, J. W. Gurley, Esq., and the figures in said notes refer to the pages of the original testimony, which have not been given in this transcript.)

856 *Motion & Subrogation.*

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Filed 2 June, 1887.

On motion of W. S. Benedict, of counsel for complainants, and on suggesting the annexed transfer of the interest of Randazzo & Di Christina, as complainants herein, to their co-complainant V. Scalzo—

It is ordered by the court that said transfer and subrogation be and the same is now entered of record.

U. S. Circuit Court.

V. SCALZO *et als.*
vs.
JOSEPH OTERI.

For and in consideration of *of* value received in the sum of two thousand dollars I do hereby transfer and assign to V. Scalzo all the right and interest of Randazzo & Di Christina in and to the above & above-named suit.

(Signed) I. RANDAZZO.

Filed 2nd June, 1887.
T. M. C. HYMAN, *Dep. Clerk.*

857 *Submission of Case.*

Extracts from Minute Book.

NEW ORLEANS, SATURDAY, *June* 4, 1887.

Court met persuant to adjournment.
Present: Hon. Edward C. Billings, circuit judge.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

This cause came on this day to be hea-d on the complainants' exceptions to the master's report herein, William S. Benedict appearing for complainants, Joseph P. Hornor for defendant, and was argued by counsel for the respective parties and submitted, when the court took time to consider.

858 *Rule.*

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

On motion of W. S. Benedict, solicitor for complainant-, and on suggesting this cause is now under advisement, and that respondent has presented an account, which was opposed, and by virtue of which several thousand dollars remained in his hands at interest belonging to complainants, and on further suggesting complainants deem it to their interest and advantage that the said sum and interest to the date of the order of this rule be deposited in bank at interest or placed in the registry of the court—

It is ordered by the court that respondent show cause on Saturday, the 3rd day of March, 1888, at 11 a. m., why same should not be carried into effect.

Marshal's Return.

On the 1st day of March I served a true copy of the within rule

on Joseph P. Hornor, Esq., attorney, by leaving the same at his office, 16 Carondelet St., in hands of his son, Guy Hornor.

859 (Signed) R. B. PLEASANTS, *U. S. Mar.*
JNO. BAKER, *Deputy U. S. Mar.*

Filed 1 March, 1888.

Submission of Rule.

Extract from the Minute Book.

NEW ORLEANS, SATURDAY, *March 3rd*, 1888.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, circuit judge.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

The rule herein taken by the complainants on 1st of March, 1888, against the defendant to deposit the amount set forth in the account in bank at interest or placed in the registry of the court came on this day to be heard—present, W. S. Benedict, for complainants, Joseph P. Hornor, for defendant—and was argued by counsel
860 for the respective parties and submitted, when the court took time to consider.

Decree.

Circuit Court of the United States, Eastern District of Louisiana, November Term, A. D. 1887.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059. In Equity.

This cause came on at a former day of the sessions of this court for final hearing and to be heard on the exceptions of the complainants to the master's report herein and was argued by counsel for the parties respectively and submitted; whereupon and upon consideration thereof it is now ordered, adjudged, and decreed that the complainant Vincenzo Scalzo, for himself and as subrogee of the other complainants, the firm of Randazzo & Di Cristina, do have and recover of and from the defendant, Joseph Oteri, the sum of ten thousand dollars ($10,000), the amount put in the partnership by said complainants, less ⅔ of $2,538.32, expended in the interest of the partnership, with legal interest, to wit, 5 % per annum, thereon from the date of judic-al demand, June 11th, 1885, until paid; that the other exceptions be overruled, and in other
861 respects that the master's report be approved and confirmed.

It is further ordered, adjudged, and decreed that the complainants' bill of complaint be dismissed without prejudice to their right in some other form of action, as they may be advised, to prosecute the matter of defamation of character set forth in the

bill of complaint. It is further ordered, adjudged, and decreed that the costs be paid by the defendant.

Dated April 12th, 1888.

(Signed) EDWARD C. BILLINGS, *Judge.*

Filed April 12, 1888.

Rule for New Trial.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

On motion of Hornor & Lee, att'ys for defendant, it is ordered by the court that complainants show cause, on Saturday, the 21st day of April, 1888, at 11 o'clock a. m., why a new trial should not be granted in this case on the following grounds, viz:

I. That the decree herein entered is contrary to the law and the evidence.

862 *Marshal's Return.*

On the 16th day of April, 1888, I served a true copy of the within rule on W. S. Benedict, Esq., by handing the same to him in person.

(Signed) R. B. PLEASANTS,
U. S. Marshal.
J. BAKER,
Deputy U. S. Mar.

Filed 14 April, 1888.

Su-mission of Rule for New Trial.

Extract from Minute Book.

NEW ORLEANS, SATURDAY, *April* 21, 1888.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

This cause came on this day to be heard on the defendant's motion for a new trial herein—present, Hornor & Lee, solicitor- for the defendant; W. S. Benedict, for the complainants—and was
863 argued by counsel for the parties respectively and submitted, and the court took time to consider.

Refusal of New Trial.

NEW ORLEANS, SATURDAY, *April 28th*, 1888.

Court met persuant to adjournment.

Present: Hon. Erward C. Billings, district judge.

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

This cause came on at a former day of the sessions of this court to be heard on the motion of the defendant for rehearing herein and was argued by counsel for the parties respectively and submitted; on consideration whereof it is ordered that the said motion be overruled and a rehearing refused.

Motion for Appeal.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

864 Now comes Joseph Oteri, defendant herein, and, suggesting that there is error to his prejudice in the final decree herein entered against him on the twelfth day of April, 1888, and in favor of the complainant Vincenzo Scalzo, and mover desires to take appeal from said decree to the Supreme Court of the United States to operate as a supersedeas—

It is ordered that an appeal be granted to said Joseph Oteri to the Supreme Court of the United States, returnable on the first day of the next term thereof, to operate as a supersedeas, upon his giving bond in the sum of thirteen thousand dollars according to law.

Filed April 30th, 1888.

Bond for Appeal.

UNITED STATES OF AMERICA:

V. SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11059.

Know all men by these presents that we, Joseph Oteri and Joseph P. Hornor, are held and firmly bound, jointly and severally, unto Vincenzo Scalzo in the sum of fifteen thousand dollars, lawful money of the United States of America, to be paid to the said Vincenzo Scalzo, his heirs, executors, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by
865 himself, and each of our heirs, executors, and administrators, firmly by these presents. In the year of our Lord eighteen hundred and eighty-eight.

Whereas the said Joseph Oteri having heretofore, to wit, on the 30th day of April, 1888, taken an appeal to the Supreme Court of the United States from and to reverse the decision rendered on the 12th day of April, 1888, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Vincenzo Scalzo *et als. vs.* Joseph Oteri, No. 11059 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Joseph Oteri shall prosecute his said appeal to effect and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of—

(Signed) JOSEPH OTERI.
" JOSEPH P. HORNOR.

Security accepted.

(Signed) W. S. BENEDICT,
Att'y for Com.

Bond & sufficiency approved May 15, 1888.

(Signed) EDWARD C. BILLINGS, *Judge.*

866 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 865 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had and of the translation of letters and documents offered in evidence, the originals of which are contained in letter book marked A and file B, made part of this transcript, together with all the evidence adduced on the trial of the case of Vincenzo Scalzo *et als. vs.* Joseph Oteri, No. 11059 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 3 day of October, A. D. 1888.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 3 day of October, A. D. 1888.

EDWARD C. BILLINGS, *Judge.*

867 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Louisiana.

The President of the United States to Vincenzo Scalzo, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of

Washington on the second Monday of October next, pursuant to a motion and order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Joseph Oteri is appellant and you, Vincenzo Scalzo, are appellee; and you are cited to show cause, if any there be, why the judgment rendered against the said Joseph Oteri, appel-ant, as in said motion and order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, this 15th day of May, in the year of our Lord one thousand eight hundred and eighty-eight.

EDWARD C. BILLINGS, *Judge.*

868 [Endorsed:] United States circuit court. No. 11059. Vincenzo Scalzo *et al. vs.* Joseph Oteri. Citation. Marshal's return. Service accepted. W. S. Benedict, sol'r for comp't.

869 In the Supreme Court of the United States, October Term, 1891.

JOSEPH OTERI, Appellant,
v.
VINCENZO SCALZO. } No. 166.

It is hereby stipulated and agreed by and between the respective parties to this cause that in printing the record the following papers be omitted, viz:

The commercial books, including bank books of Joseph Oteri & Co., the bank checks, bills of lading, receipts, and vouchers, the whole constituting pages 182 to 507, inclusive, of the transcript of record, reserving to the parties respectively the right of bringing up any part of the record so omitted in a supplemental transcript, before the argument of the case, at the expense of the appel-ant.

JOSEPH P. HORNOR,
Solicitor for Appellant.
W. S. BENEDICT,
Solicitor for Appellee.

869½ [Endorsed:] Supreme Court U. S. 1891, October term. No. 166. Joseph Oteri, app't, *v.* Vincenzo Scalzo. Stipulation to omit parts of record in printing.

[Stamped:] Office Supreme Court U. S. Filed Aug. 11, 1891. James H. McKenney, clerk.

Endorsed on cover: E. Louisiana C. C. U. S. No. 166. Joseph Oteri, appellant, *vs.* Vincenzo Scalzo. Filed October 8, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 166.

JOSEPH OTERI, APPELLANT,

vs.

VINCENZO SCALZO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief for Defendant and Appellant.

JOSEPH P. HORNOR,
GUY M. HORNOR,
Of Counsel for Defendant and Appellant.

NEW ORLEANS, 20th November, 1891.

A. W. Hyatt Stat'y Mfg Co., Limited, 73 Camp street, N. O.—57,285.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 166.

JOSEPH OTERI, APPELLANT,

versus

VINCENZO SCALZO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief for Defendant and Appellant.

On the 11th day of June, 1885, Vincenzo Scalzo and the firm of Randazzo and Di Christina filed their bill of complaint against Joseph Oteri, alleging that on the 24th day of June, 1884, they entered into a contract of partnership, in which it was agreed:

1. They should carry on a general commission business, and import fruits from Europe.

2. The firm should be carried on under the firm name of Joseph Oteri & Co., should commence business on the 1st of July, 1884, for two years, unless sooner dissolved by mutual consent.

3. Each party contributed in cash the sum of $5,000, and the profits and losses should be divided in thirds.

4. Any extra capital required was to be furnished by Oteri at 8 per cent. interest.

5. That proper books should be kept, and trial balances

taken monthly ; that only one-half of the yearly profits should be drawn by the partners, and 2 per cent. net profits, as extra compensation, should be paid A. Di Christina.

Second. The bill alleges that Scalzo, Oteri and Di Christina went to Europe in the summer of 1884 to make arrangements for such co-partnership business, and there various contracts had been made in the firm name for such business, and Scalzo was authorized by his co-partners to remain a longer period of time to make additional contracts, which he did.

Third. That thereafter the consignments under said contracts, coming to said firm, were declined by said Oteri against the protest of your orators, who were obliged to carry along and protect the same.

Fourth. They allege that Oteri, in violation of said contract of partnership, and with malice and bad faith after said contract had been made in good faith for said firm, and before any partnership assets or capital had been used, wrote to Costarelli & Co. and Joseph Ballero & Co., Messina, and G. C. Heizel, of Palermo, and others that all contracts made for such firm should enure to his private benefit, and he would not recognize his firm therein.

Fifth. It is alleged that Oteri has refused to make or cause to be made the monthly trial balances agreed upon in said contract.

Sixth. It is alleged that Oteri has refused to recognize orators as partners ; has refused to do business in the firm name ; has villified and traduced the character of your orators, injured their credit and business reputation, and refused to carry out contracts for said firm made with his knowledge and consent ; but also still holds, uses, and profits by the money of your orators in his hands, amounting to the sum of $10,000, and refuses to return same to your orators, although duly demanded and has been placed in default therefor, *and they are entitled to be refunded their said capital, with legal interest from the 24th of June, 1884, and they now make demand therefor.*

Seventh. It is alleged that, apart from the acts of said defendant in refusing the said consignments made by said firm under their contracts in Europe, they were not aware until a short time since of the fraudulent act of Joseph Oteri in declining and refusing to carry on said contract of co-partnership.

Eighth. Orators further show that prior to the filing of this bill and after due demand had been made upon said defendant, as follows, viz: "an account of which was not given, and after demand for the capital paid in by your orators had been made, defendant made a reply that several vessels would arrive, and he would require further capital from your orators; when said vessels did arrive instructions were given for the sale of its cargo so sent the said firm, and Joseph Oteri then declined to attend to the interests of said firm in the said cargo, involving your orators in loss and damage to the consignors in a large sum of money, and they were obliged to protect said consignment to save themselves from further loss, the proceeds thereof being paid over to said Joseph Oteri for transmission to the consignor."

Ninth. That your orators are not aware of what has been done, what profits have been made, or where or how (if at all) the partnership funds were invested, and said defendant declines to give any knowledge of and concerning the same; but they aver, from information received, that said Oteri has converted the notes of your orators to his own use, and has not held the same to the credit of the partnership, and said capital should be deemed to be taken to be a part of the assets of the partnership, liable to claims of the creditors thereof (if any exists) or be refunded to your orators with interest, if no creditors exist.

To the end therefore—

1. That a receiver may be appointed, etc.;

2. That said Oteri may be required to bring into Court the said sum of $15,000.00, and such other sum as may be in his

hands arising from profits thereof or thereon, either in the business of said co-partnership or from the use thereof by said Oteri;

3. That the said Oteri may be enjoined from using the name of said partnership, etc.;

4. That said co-partnership may be decreed to be dissolved *as if the same had never been made* by reason of the acts of said defendant; that an account of its business may be taken, under direction of this Court, and that its legal liabilities may be paid and charged against the said Joseph Oteri, *and that the capital of your orators with interest be restored to them* in the premises, or otherwise, at the discretion of the Court.

A subpœna is prayed for, etc.—See pp. 1 to 3.

A general demurrer was filed (p. 4) and overruled—p. 5.

The answer of the defendant admits the partnership, but avers that the agreements are not fully set forth, as they should have been, in the bill, and annexes an authentic copy of the act of partnership (see p. 10) and quotes the important clause thereof as follows:

"It is hereby furthermore agreed that said Oteri shall be the manager of said firm, and as such have the exclusive control and direction of its affairs; also of signing all documents of whatsoever nature or kind, without any exception or reservation whatsoever, pertaining to the business of the said firm, and be, as he is alone, entitled to sign the name of said firm on all checks, bills of exchange, acceptances, bills of lading, promissory notes, or other obligations of said firm, and that in the event of any other partner or partners infringing or violating this agreement by sending any orders to Europe or elsewhere, or by signing any other documents whatsoever, then and in such an event the interest of the defaulting partner or partners shall at once cease and determine."

Second. Admitting the first part of the allegations of the second article of the bill it is denied that Scalzo was authorized

to remain a longer time in Europe to make additional contracts, and if he did they were unauthorized by the firm, and not binding upon it or upon this defendant; and that by mutual consent of all the partners one Hector Turney went with them to Europe as clerk and adviser, at the cost of the firm, which paid his expenses and salary.

Third. That Scalzo made a contract with his brother at Milazzio, in Sicily, to ship fruit to the firm of Joseph Oteri & Co., the said firm to have one-third interest therein, and the brother, Vincenzo Scalzo, two-thirds interest therein; that said Vincenzo Scalzo had no right or authority to make any such contract and was never authorized to do so by this defendant or said firm, and this defendant refused to recognize said contract or to be bound by it, as by law and the articles of partnership he had the right to do.

The Fourth, Fifth, Sixth, Seventh, and Eighth articles of the bill of complaint are absolutely denied.

Ninth. The allegations in the Ninth article of the bill are denied, and it is further alleged that, from the organization of the firm until, November 1884, the said Hector Turney was the clerk of said firm and kept the books and accounts thereof, and that from November, 1884, one Joseph Bein was the clerk of said firm and kept the books and accounts thereof, to the knowledge of complainants; the regular commercial books and accounts were kept of the transactions of the firm and trial balances taken every month, all of which were always open to the examination and inspection of the complainants, and their access to the same was never refused by this defendant; that the last trial balance of the books of said firm was taken to 1st June, 1885, which is hereto annexed as part of this answer, marked "Exhibit A;" that a statement of the assets and liabilities of said firm at said date is also hereto annexed as part of this answer, and marked "Exhibit B;" that a statement of the profit and loss account of said firm at said date is also hereto annexed as part of this

answer and marked "Exhibit C;" that a statement showing what is due to each partner of said firm is also hereto annexed as part of this answer, and marked "Exhibit D;" that since the 1st June, 1885, and for a long time prior thereto, there has been no business transacted by defendant for said firm on account of the doings of said complainants in suing for a dissolution of said firm, they having been in litigation with this defendant since 4th February, 1885, and said Exhibits A, B, C, and D correctly show the state of the affairs of said firm at this date—See pp. 5 to 7.

There are four Exhibits annexed to the answer. Exhibit "A" is a trial balance of the books of the partnership* (p. 7); Exhibit "B" is a statement of its assets and liabilities (p. 8); Exhibit "C" is a statement of the profit and loss, showing a balance of loss of $2658.74, of which each partner's share is $886.24 (p. 8); Exhibit "D" shows a statement of what is due each partner—see p. 9.

Scalzo being credited by cash received from him		$6026 93
And being debited by cash drawn	$2197 33	
And one-third share loss	866 25	
And one-third share assets uncollected	1676 47	
		$4740 05
Leaving a balance due him of		$1286 88
And Randazzo & Di Christina being credited by amount invested, etc.		$5015 00
And debited by cash drawn	$1248 75	
And one-third share loss	886 25	
And one-third share assets uncollected	1676 46	
		$3811 46
Leaving a balance due them		$1203 54

* The first four items of this Exhibit are printed in the record in the wrong column, as will be perceived by adding up the two columns after making this correction.

Replication was duly filed (p. 12), an examiner appointed, (p. 12), and on motion of counsel for complainants the defendant was ordered to produce before the examiner the books and papers from which the accounts filed herein were taken, and the receipts and vouchers of the business—p. 12.

The cause came on to be heard 4th March, 1887, and after argument was referred, *by consent*, to J. W. Gurley, Esq., as Master, to pass upon the accounts herein, and to report thereon at as early a date as possible—see pp. 13 and 14.

The master reported as follows:

"The master, to whom the above cause was referred, with respect reports:

"That the record shows that a partnership was entered into, to take effect on the 1st July, 1884, between the firm of Randazzo & Di Christina, Vincenzo Scalzo and Joseph Oteri, under the style of Joseph Oteri & Co., to carry on a commission business in the importation and sale of fruits from Europe.

"The act of partnership stipulated, among other things:

"1. That the business should be conducted under the name of Joseph Oteri & Co.

"2. That the capital should be $15,000, and be contributed by three partners in equal shares; that the firm should exist for two years, unless sooner dissolved by mutual consent; that if additional capital should be required Oteri might furnish it if he thought proper to do so, and in such event he should be entitled to charge 8 per cent. per annum interest thereon.

"3. That Joseph Oteri should be the manager of the firm; that he should have the exclusive control and direction of its affairs, the exclusive right of signing all obligations, and in case any other of the partners gave orders the interest of such partner in the firm should cease.

"4. That Oteri should be at liberty to delegate his power.

"5. That books should be kept and all transactions be entered daily therein; that the books should be open to the in-

spection of the partners; that trial balances should be taken monthly and a final balance at the end of the year.

"6. That profits and losses should be shared equally; that A. Di Christina, of the partnership firm of Randazzo & Di Christina, should be allowed two per cent. on the net yearly profits as an extra compensation for services to be rendered.

"On the 11th June, 1885, Vincenzo Scalzo and Randazzo & Di Christina filed their bill of complaint against their co-partner, Joseph Oteri, charging him with various acts to their prejudice, in violation of the articles of co-partnership, and asked that the partnership be dissolved as if it had never been made; that Oteri be required to deposit in court the $15,000 capital of the firm, and such other sum as he might hold as profits from the business or for the use of the capital; that an account of the business of the firm be taken; that its liabilities be paid and be charged against Oteri, and that the share of the capital contributed by said complainants be restored to them, with interest.

"Further, the bill alleges damages arising from defamation of complainants' characters by Oteri, and from his having for a time dropped the partnership name and conducted the business in his own.

"The master understands that the questions of damage are reserved for future action, and that he is now to deal only with those relating to the partnership.

"After a careful examination of the voluminous testimony, the master submits the findings of the fact and the conclusions to which he has come.

"1. Some time after the formation of the partnership Joseph Oteri, in company with his partners, Vincenzo Scalzo & Di Christina, and their clerk and bookkeeper, H. Terni, went to Europe in the business interest of the firm. Joseph Oteri paid the expenses of the four there and back. On their return, on their meeting in this city, the following entry was made in the

cash book of the firm by Turney, under the direction of Joseph Oteri:

By expenses—

1884. Oct. 1.	By traveling expense, fares, and etc., paid by J. Oteri	$1,888	82
" "	By traveling expense, fares, and etc., paid by V. Scalzo	259	50
" "	By traveling expense, fares, and etc., paid by A. Di Christina	28	60
" "	By traveling expense, fares, and etc., paid by V. Scalzo	252	00
" "	By traveling expense, fares, and etc., paid by A. Di Christina in Palermo	109	40
		$2,538	32

"Complainants contend that this is an overcharge, and that the whole cost of their journey to and fro could not have exceeded more than from $1200 to $1600. Oteri swears to the correctness of his statement, and says the expenses were figured up and entered in the presence of Scalzo, Randazzo, and Di Christina; that they all then assented to the correctness, and concurred in saying it was a very economical trip.

"Prior to the institution of this suit no objection appears to have been made to the charge, and since then nothing more definite than rough estimates have been offered as proof of error.

"The clerk, Terni, who is a disinterested party, in his testimony estimates the expenses for the four at $2,200, and Scalzo's estimate of the items, in so far as he recollects them, aggregates them at from $1,200 to $1,600.

"The definite and circumstantial testimony of Oteri on this subject is entitled to more weight than the later and loose estimates of others. The charge of $2,538.32 is allowed.

"2. That at the time of the departure for Europe Scalzo had paid, on account of his share of the capital, $2,000, and Randazzo and Di Christina had paid $2,500.

"3. That Oteri, while in Europe, made business arrangements in the interest of the firm.

"4. That Vincenzo Scalzo remained in Europe for some time after the departure of Oteri for home.

"Scalzo, while in Europe, had no right to make contracts for the firm, nor, indeed, does he claim it. See his testimony, p. 7 (40). Oteri, as the sole manager, had the undoubted right to repudiate and to refuse to participate in any contract or business arrangement which may have been made or entered into by any of his partners. That he did so is no just ground for complaint. The act of partnership goes further, and provided that should any of the other partners give orders on part of the firm, the interest of such partner in the firm shall cease.

"5. That some time after Scalzo's return from Europe, near the middle of September, as near as the master can determine, Scalzo and Randazzo & Di Christina paid the balance due by them on the capital of the firm, viz., Scalzo, $3000, and Randazzo & Di Christina, $2500.

"6. That the books of the firm were not kept in strictly mercantile manner.

"7. That Oteri did not, for a time after the formation of the partnership and before the 14th of November, 1884, drop the name of the firm and carry on the business in his own name.

"8. That Oteri did not furnish his co-partners monthly trial balances.

"9. That on the 14th of November, 1884, both Turni, the bookkeeper, and A. Di Christina, the partner of Randazzo, wrote, with the approval of Oteri, to their correspondents in Europe that all the troubles between the members of the firm of Joseph Oteri & Co. had been adjusted; that Vincenzo Scalzo and Randazzo & Di Christina had paid in their share of the capital, and that the business would thereafter be conducted in the firm's name.

"The facts stated in the last five preceding sections show

violation of the act of partnership by Joseph Oteri in relation to the books, the non-rendition of the monthly statements, and in conducting the business in his individual name.

"In explanation he states that he was compelled, in the interest of the firm and for his own protection, to carry on the business in his individual name by a number of reasons, and principally by the failure of his co-partners to make timely payment of their share of the capital.

"The facts stated in those sections also show a violation of the partnership obligations on part of the partners, Vincenzo Scalzo and Randazzo & Di Christina, in not completing, until November, the payment of their share of capital which was due in July.

"The facts therein stated also show that afterwards, to-wit., on the 14th of November, 1884, all the acts theretofore committed or omitted by any of the partners in violation of the partnership agreement were mutually condoned, and that harmony was restored between the members of the firm, A. Di Christina himself actively aiding in making the announcement.

"Complainants seek to avoid the effect of that adjustment on the ground that they were ignorant of the manner in which the business had theretofore been conducted; that one of the partners, Randazzo, could neither read nor write; that the other, Scalzo, was absent in St. Louis, and that Di Christina, the one who had every opportunity to acquaint himself with the books and with the general management of the business, was a boy of weak mind, and, therefore, easily influenced and controlled by Oteri.

"But we must remember that this Di Christina is one of the parties litigant, and that he appears without the aid of a curator as a person competent to stand in judgment. True, his own particular partner, Randazzo, is unable to read and write, and the other partner, Scalzo, resides in St. Louis, and it was probably the influence of these facts that induced them to insist in

their partnership agreement for greater security, the clause requiring Oteri to employ Di Christina in the business, and the further stipulation that he should pay him two per cent. on the net earnings as an extra compensation for services to be rendered by him attests their appreciation of Di Christina's capacity for usefulness.

"Again, Scalzo says that some time after his return from Europe Oteri expressed to him his dissatisfaction at the outcome of their business; said to him, there is no money in it, and expressed his wish to settle up and dissolve.

"Scalzo remonstrated, reminding him of the heavy expense they had incurred by their European tour, and told him they could not afford to stop. Turney testifies that Randazzo and Scalzo were sometimes in the office. He is not aware that they ever examined the books, but that they could have done so if they had desired.

"Of things that already transpired they certainly knew them. What they complain of now—that Oteri had rendered them no monthly statement.

"They had both been long engaged in this particular branch of mercantile business, and it must be assumed that they were well acquainted with the manner in which the security of the partners required it should be conducted.

"There is no evidence that any demand for investigation was made or that any interest in the condition of their affairs was manifested.

"How is this omission of attention to their interests to be accounted for? According to their complaint, enough had occurred to arouse inquiry, if not suspicion. They could then have made with Oteri the issue which, at a later day, led to the institution of this suit.

"In the opinion of the master, all subjects which gave rise to complaint prior to 14th November, 1884, were amicably adjusted on that day, and should be considered settled.

"It is admitted, in complainants' brief, that Oteri was amply able to have himself contributed the entire capital of $15,000, and the suggestion is made that after conducting the business for some time in his own name and finding it to be unprofitable he resumed the use of the partnership name for the pupose of throwing a portion of the loss on his co-partners; but, as Oteri is also credited with much shrewdness, it is unreasonable to suppose that he imagined he could dissolve the partnership at will and escape being called to account for the profits he may have realized by such a device. Complainants may be open to a like imputation of repudiating the contract to avoid the loss.

"As sole manager Oteri had the right to fix at discretion the amount of the advances to be allowed on consignments to the firm, and he had the right to refuse credit to all purchasers, even to his partners, for fruits sold by his direction.

"The refusal might be ungracious, but it was clearly within the power conferred on him.

"It is further complained that Oteri did not promptly pay in his share of the capital.

"Assuming that to be true, in view of the admission that he was at all times able to pay the whole capital of the firm, it seems of no practical moment whether he ever made a formal deposit of the amount with himself or not, as no damage is shown to have ensued from his failure to do so. The money was in his possession, and the accounts which he has presented embrace the full sum.

"The evidence does not show that Oteri ever profited to the exclusion of his partners, nor an instance in which a loss of money to the firm resulted from an unauthorized act of any of the partners.

"The master is of opinion that all the losses are attributed to the depressed condition of the fruit market at the time of the arrival of the consignments, and not to the acts of any of the partners.

"The books before the Court were made up from the old ones and from such memoranda as were accessible, by gentlemen who were disinterested and who were equally the friends of all the partners.

"Their qualification for the task will be admitted, and the time and study they devoted to it entitles the results of their work to confidence.

"The master recommends that it be accepted as correct.

"The settlement lately effected by Oteri, of the claims against Gioe and G. Di Christina, of Sicily, will require some modification of the statements. Since the order of reference additional evidence has been offered on part of the defendant, but the master did not feel at liberty to receive or consider it, as the evidence on both sides had been closed.

"In the opinion of the master, the partnership should be considered as continuing uninterrupted from 1st July, 1884, to the 2d February, 1885, at which date Oteri was called to answer in the State court the suit of his co-partners for its dissolution; that from the 2d February, 1885, Oteri had no authority to enter into any new engagements for or on behalf of his co-partners, but it remained his duty to conduct to conclusion all obligations and contracts made or commenced before that date.

"The evidence has satisfied the master that no amicable adjustment of this partnership could or would have been made by the partners, and that a suit was necessary to settle their affairs. He therefore recommends that the costs of the suit be divided equally between the three.

"The master asks that the court will allow him a reasonable compensation for his services herein.

(Signed) J. W. GURLEY, Master.

See pp. 232 to 237.

Counsel for complainants thereupon filed the following exceptions:

1. There is an error in concluding that Joseph Oteri, as general manager of the firm, did not delegate authority to his co-partners, whilst in Sicily, to make contracts on behalf of the firm—

For this:

a. Joseph Oteri was entirely unknown, and his co-partners were well known, on that island.

And it is established that under their reputation and private or business connection with the various parties the affairs of the contemplated partnership commenced at that point.

b. In your having concluded that the oath of Joseph Oteri was entirely to outweigh that of his co-partners, in whom he placed confidence, and that of the book-keeper, in whom mutual confidence had been placed.

An as against the sworn statements of five or more witnesses in Sicily, as to whom Joseph Oteri made certain statements, which are positively and unequivocally denied by each of the five.

Note.—In regard to this, see the statement made by Scalzo himself, in the testimony taken by Langford p. 7. (40) J. W. G., Master.

Therefore, it being in the ordinary expectation of litigation established that the word of Joseph Oteri has been proven untrue, each and every fact and circumstance should be viewed with suspicion and distrust, when made or uttered by him, and not viewed and weighed as entitled to credence and allowed as true, granted as true, by your Honor in a case in equity.

2. We except to your report as to the matter of the books, for the following reasons:

a. The matters of the firm were not daily entered therein, and the first entry which appears is of a date many months subsequent to the payment in part of the capital by the co-partners, and then, such entries so based upon the verbal statements of the defendant, against which statements we urge the points set forth in our first point of exception.

3. We complain for error of the allowance of $2,538.32 as traveling expenses.

In verifying our complaint, we refer to the testimony of complainants and of Terni, the mutual friend.

(On margin, in red ink:) Terni estimates the expenses at $2,200. See his testimony, p. 7. (220) The maximum of Scalzo's estimated items of expense: amount to $2,400 for the four persons, viz., $20+90+100+$200. See testimony, p. 2 et seq. (36) See also other testimony of Scalzo, taken 14th May, 1886. (27 et seq.)

We refer to our averment on the first point of exception as to the weight necessary to be allowed the testimony of defendant. The oath of Oteri, that his co-partners and others consented to the correctness of the charge is denied by them, and hence is of no weight, and surely under the direct facts of actual expenses, it was and is impossible to aggregate the amount charged by the defendant for travelling expenses, unless there be included losses and expenses incurred by defendant in gaming or other pleasures of the trip.

(On margin, in red ink): Is the partnership, therefore, to be considered as never having existed?

4. As you have found the books were not properly kept by the act of co-partnership.

5. As you have found that monthly trial balances were not furnished the co-partners, it is immaterial whether the co-partners, one of whom was unable to read or write, and the other absent, placed the defendant in default thereof. His duties under the extraordinary powers which you have granted him was to have rendered such accounts from books properly kept, and failing to do so, his simple oath to the correctness of such books and balances, unsupported by the vouchers which he could have had and which he could have produced, is entirely insufficient to justify the accounts which he rendered from his books, made mainly, as shown by the uncontradicted evidence procured by himself, upon his own *ipse dixit.*

(*On margin, in red ink,*): *which of the items are shown to be false? Is not the weight of evidence in favor of their correctness?*

6. That there is error in concluding that from and after a time, after the middle of September, 1884, when as is found, the defendant ceased to do business for account of firm and carried on the business in his individual name, and that thereby and because subsequently thereto, for a short time, and without knowledge thereof, the co-partnership was again conducted amicably until the complainant ascertained what had been going on (between September and November), that they should be bound by the acts of Joseph Oteri in the meantime. This was an active default on the part of defendant, and is so charged, and, not having been shown to have come to the knowledge of complainants until February, 1885, the complaint herein is verified by the finding you have made and justifies the complainant herein for a return of the capital advanced intact.

It is admitted by you that the defendant did not put up his own capital, as required by the articles of co-partnership, but it is urged by you in examination that he was worth the entire capital individually.

(*On the margin, in red ink*): *What of the letter of credit obtained by Oteri from the Union Bank?*

That reason is not sound in law, as V. Scalzo, another of the co-partners, was also worth the entire amount of the capital of the firm.

(*On the margin, in red ink*): *Oteri held his own and his partners' money on deposit.*

No demand was made for the additional capital until a time subsequent to the return of the co-partners from Sicily, when the same was promptly furnished by the co-partners; but even up to that time and subsequently the defendant did not furnish his share of the capital, but had individually used the money put in by the partners for the capital for his own benefit and for his own interest, and subsequent to February, 1885, withdrew the balance of capital from the bank where the partnership

funds had been by him placed, and the same may now be an entire loss to complainants, and interest is due thereon from that date, and there was, therefore, error in granting to defendant good faith, honor, honesty, fair dealing or verity of statements.

(*On margin, in red ink*): *True, if anything is due to them.*

There was likewise error in this respect, in the conclusion you have reached that, outside of the testimony of the co-partners (complainants), the testimony of five disinterested witnesses in Sicily, who made their contract with Joseph Oteri, should be entirely ignored, not passed upon, and credit to be given to Joseph Oteri, as against the combined evidence of seven witnesses.

(*On margin in red ink*): *Testimony from Sicily on what subject?*

7. The reason given by Joseph Oteri for carrying on the business in his individual name after his return from Sicily, being on account of the failure of his co-partners being unable to make payment at the time of their capital, is not worthy of your attention.

To that date the complainants had furnished more capital than he had furnished.

He had drawn that capital as he had saw fit, not in the line of business of the firm.

Not entered it on any of the minutes of the books.

Not shown to be in connection with the business of the firm.

No notices had been given by him to his co-partners to furnish the balance of their capital until on or about the 14th of November, when it was furnished.

At that time, and even subsequent to that time, he had not himself furnished his proportion of capital.

So his reasons are unworthy of your attention.

8. The fact that on the 14th of November the co-partners agreed to act in harmony must be taken in connection with the

knowledge afforded the co-partners at that time of the acts of the defendant.

And you have erred in concluding that the acts before that time committed or omitted by Oteri were known to the complainants.

The contrary appears, as they were not aware, until the latter part of January or beginning of February, 1885, when they ascertained by accident or incident what their co-partners had done; they then determined upon an investigation of his acts.

So the conclusion of condonation is erroneous.

The fact of faith being placed in Oteri by the co-partners, and their failure to examine the books themselves, in ordinary commercial business, does not warrant a conclusion that the fraud or bad faith of the defendant shall result in a benefit to himself and injury to his co-partners when he fails to produce the proper books.

When he fails to produce any vouchers for entries in his books, and where he seeks, after the evidence in the case has been closed, to produce vouchers (not shown to have been out of his possession) which he was called upon to produce during the trial of the case in their entirety.

Note.—The master finds that he erred in refusing to consider the new evidence offered by the defendant. See stipulation annexed to testimony of Scalzo—p. 5. (38.)

Surely some different view from that you have adopted must suggest itself to your mind relative to such matters.

9. You are in error in concluding that all settlements prior to November 11, 1884, were amicably adjusted.

That conclusion can only be reached by showing knowledge, in the complainants, in the acts done and had prior to that time, and the truth is that such knowledge did not come to the complainants until the latter part of January, 1885.

(On margin, in red ink:) See complainant's brief A, p. 1.

You are in error in concluding that complainants say defendant sought to avoid losses, which he found would be inevitable, by resuming the partnership in November, 1884, in concluding had there been profits the complainants would have availed themselves thereof, for the manifest reason that, so far as complainants are concerned, there is no imputation as against their good faith and fair dealing.

For the reason that the bad faith and double dealing of the defendant is amply established.

For the reason that no one should be permitted to profit by his own wrongs.

(*On the margin, in red ink*): *It is clear that no profits have been made.*

For the reason the complainants were in ignorance of the double dealing and bad faith of the defendant until they brought their action in the State court.

In other words, it seems from the finding of the facts by you in this —

a. That proper books were not kept.

b. Proper entries were not made.

c. Vouchers were not produced.

d. Monthly balances were not given.

e. Defendant repudiated the partnership and carried it on his own name.

f. He did not tell his co-partners what he had done in November, 1884, when he caused them to act with him.

g. They did not ascertain it until the end of January, 1885.

h. They then repudiated his acts.

That they are in fault and must suffer from his acts without any complaint against them, verbally or in writing, or by way of testimony, and he must benefit by his violation of the articles of co-partnership and his own misdeeds.

Are not these matters to be more carefully weighed?

10. There is error in taking the books made from the old ones as correct.

There is no dispute; the new books were correctly copied from the old ones.

The new books depend upon the old books for their entries.

The old books depend entirely upon the assertions, statements and testimony of Joseph Oteri, the defendant, for their verity.

An examination of the vouchers produced by the defendant concerning the entries on those books show that they are false and untrue.

Which ones?

(On the margin, in red ink.)

The vouchers produced do not indicate, or show but a slight portion of the charge made upon these books as having been paid.

If, as according to the articles of partnership, Joseph Oteri was the active manager of the concern, as he has been viewed by you in this matter, it was the more incumbent upon him than an ignorant resident partner, and an absent partner, and a weak-minded partner, who was clerk, to show, before a court or master, a clean hand, a clean set of books, a proper conduct of his business, and adequate vouchers for each and every expenditure, failing to show he had advanced his own capital at the proper time and place.

Failing to show he produced proper vouchers when called for.

Producing vouchers which he thought would be beneficial to —— after the evidence had closed, and no doubt being in possession of other facts and circumstances in connection with the case. We may well ask your Honor—you have concluded that books made up upon his evidence alone, upon entries dictated by him, are to be regarded as true under such circumstances.

11. We agree with your Honor in your concluding opinion, that if he held that the partnership should not be regarded as void from the beginning, or the acts of defendants as voidable from about the middle of September, 1884, or as renewed on the 14th November, 1884, that, at all events, it concluded on the 2d February, 1885.

But we maintain the following propositions, and ask your consideration thereof before presenting your report to the court:

1. That all parties were in good faith when the act of co-partnership was passed, and that each advance was made they deemed necessary at that time, and to subjecting the firm to the expense of the trip to Sicily.

2. There is no evidence to show that at that time the defendant was acting in any way in bad faith; but there is evidence to show, and it is conclusive in its nature, that a few days after the arrival of the parties in Sicily the bad faith was evinced and shown, and it therefore follows that you should hold whether or not such bad faith tended to relieve the complainants from any obligations in the premises, and imposed upon the defendant the obligation of returning the capital they advanced prior to that time.

3. That the additional evidence of the bad faith of the defendant, without application to his co-partners for their additional capital, without advancing his own capital, to repudiate the firm, and to do business for two months in his individual name, on contracts made for the firm, and without the knowledge of his co-partners, justifies their action to recover their capital.

4. That the acts of defendant thereafter, in calling on his co-partners for their additional capital, concealing from them that he had conducted business of the firm contracts in his individual name, had reviled them, libelled their names and charac-

ter by letter, and slandered them personally, also justifies their act for the return of their capital with interest.

5. That his acts as above set forth, his knowledge on or about the 14th of November, of losses likely to occur, justifies the conclusion of his call upon his co-partners for the balance of their capital to relieve himself from the entire loss which his previous acts had entailed upon him, and they should not be held liable therefor, they being kept in ignorance of such acts until about the end of January, 1885.

6. That knowledge coming to them at that time of such acts—such bad faith on the part of defendant—justifies their proceeding in dissolving the firm and claiming the return of their money invested therein.

7. That although general manager of the firm, defendant was not justified in violating an agreement he had made with his co-partners, who learned in that business in advancing upon shipments an amount in excess of what was agreed upon, he being ignorant of such business, and his pretended ignorance of his native tongue, which he speaks with the fluency of a native, but pretends he is unable to read and write, being a perfect scholar as well in that as in the English language.

8. We submit you have erred in disregarding the testimony of Allessi, Morano, Scalzo and Terni; that there was no business done except the trip to Sicily, and no money was required except for that trip until the return of Oteri, in October; that there was no necessity for any further funds being furnished by any of the partners; that from the testimony of those witnesses and those in Sicily it is plainly apparent that the object of Oteri (not made known to his co-partners) was, as soon as he returned, to conduct the business in his own interest and benefit, and that his resort of compulsion to his co-partners to put up the balance of their capital without putting up any more on his own behalf was to annul the firm business and conduct it for his own behalf.

9. That the testimony of young Di Christina, a boy, inex-

perienced, was not given consideration of his want of proper capacity (not amounting to a cause which would authorize another to act for him); his acts cannot be regarded in the light of testimony given in the case.

10. We submit you have erred in charging to Randazzo's personal account the amount of money which Oteri, the defendant, himself personally gave to R. Di Christina, the elder, in Palermo, for account of the firm; so testified by the said Oteri so testified by said elder Di Christina, and for which said Joseph Oteri holds the receipt from said R. Di Christina, Sr., for account of the firm, and yet seeks to charge, and charges his partners, Randazzo and Di Christina, with said sum, although they themselves could not in any event realize personally upon said receipt or upon said contract.

We, therefore, respectfully submit these views to your Honor, that you may consider the conclusions which you have reached in your report, to the end that justice be done at all events.

(The notes in red ink, written in the margin of the above exceptions, are memoranda made by the special master, J. W. Gurley, Esq., and the figures in said notes refer to the pages of the original testimony, which have not been given in this transcript). See pp. 238 to 244.*

In answer to these exceptions, in addition to the notes which he made in the margin thereof, the master filed the following addenda to his report:

ADDENDA.

The exceptions taken by the complainants are general and go to the whole report. The master has attentively examined them, as well as the testimony of the witnesses referred to.

The pleadings claim no relief, based on the mental inca-

*We have inserted, in their proper places, the numbers of the pages of the printed transcript referred to by the Master in his marginal memoranda made on these exceptions.

pacity of Di Christina. If his condition is such as to free him from responsibility, then it is submitted the suit must abate from defect of parties.

In regard to the books the case presented does not justify the conclusion that the partnership should be treated as void from the beginning, and that complainants' capital be returned with interest. If this view is correct, then the best data for a settlement that can be found should be accepted. Undoubtedly, a more complete record of the business transactions might have been kept, but such as was made should not for that reason be rejected, if from it reasonable certainty can be arrived at.

The condition and character of the parties should not be overlooked.

Oteri could neither read nor write the Italian language.

Scalzo was versed in the Italian, but was ignorant of the English.

Randazzo, whose testimony shows him to be a man of great natural shrewdness, appears to speak both languages, but could neither read nor write either. His equality, however, with his partners was secured by the stipulation that his own partner, Di Christina, should be employed in the office.

The selection of Terni, as bookkeeper, was satisfactory to all. He kept the books in the Italian language, the language of Scalzo and Di Christina, and he swears that all the entries he made in them are correct. Oteri was no bookkeeper, and had he been, he could not have supervised books written in a language of which he was ignorant.

On the eve of suit for the dissolution, Oteri delivered all the books and papers to Mr. Luigi Del'Orto, and requested him to prepare a statement of the accounts. Del'Orto is an Italian and familiar with the language; a fruit merchant, a bookkeeper and accountant; a friend of all the partners, and familiar with the character of business in which they have been engaged. Assisted by Mr. Bein, an accountant of twenty years' experience,

he assumed the task, and of the books and his work in substance, says: The new books were from the old ones. From them I journalized the items. When I could not understand, Oteri would explain how and why the transaction had occurred, but the figures in no way differ. I did the work as a favor and a disinterested person; received no compensation; all the partners are friends of mine. I thought I would help one as well as the other by doing the work. I made the entries by first looking at the old books, and then I looked up the vouchers, if they were there. If I could find no voucher, and the entry in the old books was doubtful, the correspondence would explain in some way, and then the accounts current that would come from Sicily, and even the acknowledgment that the accounts current were correct. My interference in this case was in good faith, and was for the benefit of all the parties concerned, as I thought, although Oteri had requested me to do this work.

The statements of Del'Orto in this abstract of his testimony are corroborated by Mr. Bein.

The master was in error in refusing to receive in evidence the bank book procured by the defendant after the submission of the cause. See stipulation appended to deposition of Scalzo p. 5 (38).

The master finds no reason to change his report.

Respectfully submitted,

(Signed) J. W. GURLEY, Master.

See pp. 237, 238.

Pending the hearing of these exceptions of the master's report before the court, Randazzo transferred all his interest in the case to Scalzo (p. 245), and on the 4th June, 1887, the exceptions to the master's report were argued and submitted (p. 245), and on the 12th April, 1888, when a decree was rendered in favor of Scalzo against the defendant, for the sum of $10,000, the amount put in the partnership by said complainants, less two-thirds, $2538.32, expended in the interest of the partner-

ship, with legal interest, to-wit: 5 per cent. per annum thereon from the date of judicial demand, June 11th, 1885, until paid; and in other respects that the master's report be approved and confirmed; and that complainants' bill of complaint be dismissed without prejudice to their right, in some other form of action, to prosecute the matter of defamation of character, set forth in the bill of complaint, the costs to be paid by the defendant. (See p. 246.) After an ineffectual attempt to obtain a new trial (p. 247), the same was refused (p. 248), and defendant took this appeal.

ASSIGNMENT OF ERRORS.

1. That the demurrer of the defendant should have been sustained and the suit dismissed.

2. That the court erred in overruling any part of the master's report, but should have rendered a decision in conformity thereto.

3. That the decree is erroneous in sustaining any of the exceptions to the master's report, the same being too vague and indefinite, there really being but one general exception, and that entirely unsustained by any reference to any particular evidence showing any error or mistake on the part of the master.

4. That there should not have been judgment in favor of Scalzo and against defendant for $10,000, *the amount put in the partnership*, less two-thirds of $2,538.32, *expended in the interest of the partnership.*

5. That at the most there should have only been judgment in favor of Scalzo for $1,046.84, and in favor of Randazzo and Di Christina for $1,203.54, as shown by the statement annexed to the answer of Oteri (p. 9), and found correct by the master, subject to such modifications as may have occurred from settlements made during the litigation, as suggested by the master at p. 236, line 16 from bottom.

6. That it is error in the decree to adjudge that "in other respects that the master's report be approved and confirmed,"

when the first part of the decree reverses the whole of the master's report.

7. That the decree is erroneous in throwing all the costs on the defendant, when the master reported that the costs should be divided.

I.

In submitting to this Court the proposition that there was error on the part of the lower Court in overruling our general demurrer filed to the complainants' bill, we call attention to the very loose and irregular manner in which the same is presented by the allegations contained therein; so irregular and vague and indefinite, that if it is a bill for the dissolution of a co-partnership and for an accounting between the partners, there are no such allegations set forth as would justify the holding of the defendant to answer thereto; but it is evident that it is not such a bill, but rather one to annul a certain contract of partnership and for the recovery of the entire amounts contributed under the same to the capital stock of the partnership by the complainants, with legal interest from the date of said contract, 24th June, 1884; there being no definite allegation that complainants had ever paid in any amount, and no allegation at all that they had done so on said 24th June, 1884, or any other specified date.

The main and charging allegation in the bill is in the sixth section (p. 2), and is to the effect that, by reason of certain illegal and malicious acts of the defendant, the complainants "are entitled to be *refunded* their said capital, with legal interest from 24th June, 1884, and they now make demand therefor." And the main prayer for relief, contained in the fourth paragraph of the prayer of the bill (p. 3), is: "That said partnership may be decreed to be dissolved as if the same *had never been made* by reason of the acts of said defendant; that an account of its business may be taken under the direction of this Court, and that its legal liabilities may be paid and *charged against the said Joseph*

Oteri, and that the *capital of your orators*, with interest, *restored to them* in the premises."

So this is not a suit for an accounting; and if there could be any doubt about it, the decree of the Court on the merits would settle that doubt, because it grants the prayer of the bill as cited by us, adjudging that complainants recover of the defendant "the sum of ten thousand dollars, the amount put in the partnership by said complainants" —p. 246.

Our contention is that the Court had no equitable jurisdiction of such a question, and that complainants had their remedy, if any, in a Court of law, and there is no allegation even in their bill, that they have not. It is evident that this is not a suit for the settlement of a partnership and an accounting, but for the recovery of certain sums of money paid by complainants to defendant, and tortiously misapplied by him, and the judgment proves the proposition, verifying the old proverb.

It will not do to answer that this case is covered by the opinions in Smith vs. Everett, 126 Mass. Rep. 304, and similar cases, because there the complaint was that one of the parties to the agreement of partnership had been induced to enter into it by the false and *fraudulent representations* of the other, and there is no such allegation here; on the contrary, the averment is that the defendant, after the formation of the partnership, "had converted the funds of your orators to his own use, and "has not held the same to the credit of the partnership," (see Sec. 9 of the Bill, p. 3), and therefore plaintiffs have their action at law, "for money had and received," or for damages for the non-fulfilment of the contract of partnership by the defendant. Scott vs. Rayweut, L. R. 7 Eq. 114; Hercy vs. Birch, 9 Vesey Jr., 357, (Sumner's Edition, note on p. 360); Downs vs. Collins, 6 Hare, 418; Gale vs. Leckie, 2 Starkie, 107; Morrow vs. Saunders, 1 Brod. and Brig. 318; Vivers vs. Tuck, 1 Moore P. C., N. S., 525.

II.

On the merits of the case, it appears that after argument before the Court the *cause* was "referred, *by consent*, to J. W. Gur-"ley, master, to pass upon the accounts herein, and to report "thereon at as early date as possible." We contend that the *whole cause*, that is, all the issues, was referred to the master by consent, and he so treated it, as appears from this report (pp. 232 *et seq.*), and his action was acquiesced in by the complainants, as appears by their exceptions to the report (pp. 238 *et seq.*), they not having made any objection to his having passed on all the issues. But even if the reference is to be considered as being limited to having the master pass upon the accounts, the same results must follow, as under the facts developed by the evidence there is nothing in the case but the correctness of the accounts.

The reference, then, to a particular master by name, having been *by consent*, and said master being a special tribunal selected by the parties, and he having found in favor of the defendant, that the books kept by him and the accounts rendered by him therefrom were correct; that the defendant had never profited to the exclusion of his partners, and that no loss of money to the firm had resulted from an unauthorized act of any of the partners (see p. 236); it was error in the Court to render judgment against the defendant, as it did without reasons, thus setting aside and annulling the master's report, which amounted to an award of abitrators or amicable compounders, and the exceptions filed by the complainants to the master's report cannot be held to furnish grounds for the action of the Court in rendering judgment contrary to the report, because said exceptions fail to refer to a single page of the evidence contradicting the findings of the master, or showing error or mistake on his part; in fact, no special reference at all is made in said exceptions, which are merely general in their character: and refer only to the evidence *in globo*.

"It is not within the general province of a master to pass

"upon all the issues in an equity case, nor is it competent for the "Court to refer the entire decision of a case to him without the " consent of the parties. It cannot, of its own motion, or upon " request of one party, abdicate its duty to determine by its own "judgment the controversy presented, and devolve that duty " upon any of its officers. But when the parties consent to the " reference of a case to a master or other officer to hear and de- " cide all the issues therein, and report his findings, both of fact " and of law, and such reference is entered as a rule of the Court, " the master is clothed with very different powers from those " which he exercises upon ordinary references, without such " consent; and his determinations are not subject to be set aside " and disregarded at the mere discretion of the Court. A refer- " ence, by consent of parties, of an entire case for the determi- " nation of all its issues, though not strictly a submission of the " controversy to arbitration—a proceeding which is governed by " special rules—is a submission of the controversy to a tribunal " of the parties' own selection, to be governed in its conduct by " the ordinary rules applicable to the administration of justice in " tribunals established by law. Its findings, like those of an " independent tribunal, are to be taken as presumptively cor- " rect, subject, indeed, to be reviewed under the reservation " contained in the consent and order of the Court, when there " has been manifest error in the consideration given to the evi- " dence, or in the application of the law, but not otherwise."— See Kimberly vs. Arms, 129 U. S. 524.

And in Keep vs. Fuller, 42 Fed. Rep. 897, it is laid down that: "It is wise to remember at the outset that the Court is " not now to decide *de novo* the various questions presented on " the accounting. The present investigation is confined simply " to the question, did the master make any mistake which re- " quires the setting aside of his report? He stands as the rep- " resentative of the Court, and is better able, by far, than one " who only reads the testimony from a printed book, to tell what " witnesses are entitled to credit, and where the truth lies in " the controversy before him. His findings are *prima facie* cor- " rect, and the burden of showing error is upon the party who " excepts. If the proof is sufficient to sustain the master's find- " ings, it is enough. The investigation terminates at this point,

"even though the Court, sitting in the master's place, might, upon "similar evidence, reach a different result. The conclusions of "the master, depending upon the weighing of conflicting tes- "timony, have every reasonable presumption in their favor, and "are not to be set aside or modified, unless there clearly ap- "pears to have been error or mistake on his part."

Keep vs. Fuller, 42 Fed. Rep. 897; Tilghman vs. Proctor, 125 U. S. 136, 149; Callagan vs. Myers, 128 U. S. 617, 666; Kimberly vs. Arms, 129 U. S. 512, 525; Central Co. vs. Texas R. Co., 32 Fed. Rep. 448; Welling vs. La Bau, 34 Fed. Rep. 41.

III.

We contend that the decree is erroneous, in that the court has failed to give any reasons for setting aside the master's report, and finding defendant liable in so large a sum of money without referring to any mistake or error committed by the master, rendering it impossible for counsel to address themselves to the points of difference, or to point out errors into which the court may have fallen; and, if it is replied that the reasons for the judgment of the court are to be found in the exceptions of the complainants to the master's report, then the decree is erroneous in sustaining any of those exceptions, because the same are too vague and indefinite, they being really but one general exception to all the findings, and founded on no particular ground, and unsustained by any particular reference to any specified part of the evidence showing any mistake or error on the part of the master. A perusal of these exceptions (pp. 238 *et seq.*) shows that they are nothing but a blatant protest against the master's findings, and a general argument that the partnership agreement had never been executed, and that complainants' capital should be returned. For instance, in concluding the second paragraph of their exceptions (p. 239), complainants say: "In verifying "our complaint we refer to the testimony of complainants and "of Terni, the mutual friend." Now the testimony of complainants and Terni is scattered in six different places in the

record (see index), and covers thirty-one printed pages; and it appears from the master's report (foot of p. 233) that he carefully considered the evidence of the complainants and of Terni on the point in question, and found that "the definite and circumstantial testimony of Oteri on this subject is entitled to "more weight than the later and looser estimates of others."

What weight could any Court give to such loose and general exceptions against the careful conclusions, after mature consideration, of the master?

"It may be observed, generally, that it is not the province "of a Court to investigate items of an account. The report of "the master is received as true, when no exception is taken; and "the exceptions are to be regarded so far only as they are supported by the special statements of the master, or by evidence, "which ought to be brought before the Court by a reference to "the particular testimony on which the exceptor relies. "Were it otherwise, were the Court to look into the immense "mass of testimony laid before the commissioner, the reference "to him would be of little avail. Such testimony, indeed, need "not be reported farther than it is relied on to support, explain, "or oppose, a particular exception." See Harding vs. Handy, 11 Wheat. 126.

"Exceptions to the report of a master should be precise, "and raise well defined issues. When they are vague and "general, and require of the Court the performance of duties "which properly belong to the master and counsel, they will be "overruled." See Stanton vs. R. R. Company, 2 Wood, 507.

But all of the exceptions were duly and faithfully considered by the master, and their utter futility demonstrated, not only by his marginal notes on the exceptions themselves, but by an *addenda* to his report, which will be found on page 237.

Clearly the Court was in error in overruling the master's findings without assigning any reasons therefor, particularly, as we have seen by the decisions, that the submission having been *by consent*, it could not have legally done so without finding "manifest error in the consideration given to the evidence, or

" in the application of the law." Kimberly vs. Arms, 129 U. S. 524.

IV.

The great error that we complain of is that the Court has found that defendant owed complainants, according to the decree, " ten thousand dollars, *the amount put in the partnership,* " *by said complainants,*" (Decree, p. 246) ; this amounts to a finding that there was no partnership, and that therefore complainants could recover back their capital ! This is not only against the findings of the master, and all the evidence, but against the admissions of complainants in their bill, Section 2d (foot p. 1), to the effect that in pursuance of the act of partnership, three of the firm, immediately after executing said act, went to Europe to make arrangements for such co-partnership business, and made various contracts in the name of the firm for such business, etc.; and it is also admitted in several places in the exceptions filed by complainants to the master's report, notably on p. 240, where they allege: " no demand was made for the additional capital until a time subsequent to the return of the partners from Sicily, when the same was promptly furnished by the co-partners" (complainants).

But the Court contradicts itself in its decree; for after thus finding that there was no partnership and decreeing to complainants the return of their capital on that ground, the Court goes on to say that that amount shall be recovered " less two thirds of $2538.32, expended in the interest of the partnership" (p. 246) ; thus finding that there was a partnership, in the interest of which all parties had expended a considerable sum of money, but declining to take an account of the same, and, as there happened to be a loss, throwing the whole of said loss upon defendant ! and then decrees that he shall pay interest on it ; and gives him no credit for money drawn out of the partnership by his partners, as found by the master !

Where does the Court get these figures, $2538.32 ? it is the

sum charged by defendant as having been paid by him for the expenses of the trip to Europe, and allowed by the master p. 233.

But why does the Court only allow defendant two-thirds of this amount; when he paid it all? True, the extract made by the master from the books (p. 233) shows that it had been partly paid by the other parties, but the master finds that it was all paid by defendant because he had refunded it to his partners. If this were not true, then the entry, taken by itself, shows that Oteri had paid $1882.82 of the amount, while the two-thirds allowed by the Court is only 1692.20! What could possibly have induced the Court to divide the amount as it did? We can find nothing to warrant it in the evidence—will your Honors look for it?

V.

The defense in this case consists of the well established facts that the defendant faithfully carried on the business, did the best he could with it, and has presented a correct account of all the transactions of the firm.

It must be borne in mind that the third section of the articles of partnership expressly provide: "That said Oteri shall be the manager of said firm, and as such, shall have exclusive control and direction of its affairs"—p. 10.

And under the authority thus conferred upon him, he cannot be held in law to his co-partners except for an honest administration of the affairs of the co-partnership; he cannot be held for errors of judgment or mistakes, or for any losses in that regard. The management was left to his discreiton, and whatever he did must be taken as having been done by him for the best, and needing no approval on the part of his partners.

It is true that, by the articles of partnership made on the 24th of June, 1884, the three partners agreed to put in $5,000 each, and that by the cash book it appears at that time the complainants paid in $4,500 altogether, but that entry on the cash

book was made long afterwards, after the return of the parties from Europe, when the books were first opened ; therefore, the payment by complainants was made to the defendant, and the defendant held that money, as he held his own, until the complainants should pay the balance due by them, namely, $5,500 more, and until the business should commence after the return from Europe. In this connection, all the evidence shows that the $4,500 credited as having been paid in by the complainants at the time of making articles of partnership, $2,000 of it paid in by Scalzo was not paid in until the partners were in St. Louis on their way to Sicily, and, by the articles of partnership, the complainants should have paid in, at the date thereof, the whole of their $5,000 each. It also appears, by the bank book, that the defendant deposited to the credit of the firm, in the Louisiana National Bank of New Orleans, on the 8th of July, 1884, before he went to Europe, the sum of $6,000 in cash.

The expenses of the trip to Sicily, paid by defendant, was agreed upon by all the partners; on their return, Mr Terni making out the statement from memorandums and so charging them in the books ; this entry was made to the knowledge of all parties ; was made by Mr. Terni, the book-keeper, who had been appointed by consent of all parties, and binding on all parties—See Terni, pp. 62, 64 ; Oteri, p. 208, 229.

Scalzo and Terni do not say in their testimony that the expense did not exceed $400 for each individual, but they simply say that they believe that $400 for each individual would have been a fair allowance for those expenses. This is entirely a matter of guess work with them, while the figures as charged by the defendant were made up between him and Terni after the return, and charged on the books to the knowledge of all the partners and before any disagreement had occurred—p. 229.

It is wholly erroneous to say that the defendant advanced nothing towards the capital ; he did put up his share, as is shown

by the first entries on page 2 of the cash book (exhibit S. L.) in Terni's hand-writing, namely:

Randazzo and Di Christina	$2500 00
V. Scalzo	2000 00
Bank interest on $6000	42 00
Joseph Oteri, cash	3738 49
Total	$8280 49

Page 3 of the cash book shows that part of this amount was advanced to various parties, and the balance was expended for clerk hire, stationery and various other expenses up to October 1st. On November 15th, the deposit of $5,968.41 in Union National Bank formed the balance of cash left out of the capital stock of $15,000, after deducting advances and other expenses, as shown by the cash book kept by Mr. Terni. On October 1st, V. Scalzo owed his balance of capital

V. Scalzo owed his balance of capital	$3000 00
Randazzo and Di Cristina	2500 00
Joseph Oteri	1221 51
Total	$6721 51

which was afterwards paid, and after deducting from this amount the various expenses as described in the cash book, it left a balance, on November 15, of $5,968.41 cash on hand.

By the second article of the partnership (p. 10), the defendant might furnish more capital, but only if he deemed proper, and not otherwise; he was not, in any manner, obliged to furnish any more capital. The stipulation in the fifth article (p. 11), requiring proper books of account to be kept, must be taken in connection with the admitted fact that Terni was the chosen clerk of all the parties, and that the books of account were to be kept by him. If he made mistakes in keeping such accounts, or if he did not keep them properly, it was not the fault of the defendant, who is not pretended to have been a book-keeper.

Defendant, not being a book-keeper, was not able to ascer-

tain if the books were kept in proper shape. His particular business was to look after the cash and to see that proper debits and credits were entered in the books by Mr. Terni, in whom full confidence was placed by all the partners, and all this the defendant did attend to.

As to the charges that the defendant carried on the business for a time in his own name and not in the name of the firm, we answer :

(*a.*) It must be remembered that several months elapsed before Scalzo and Randazzo put up the balance of their capital, and the defendant had good cause to fear that they would not put it up ; therefore, not wishing to break the contracts he had made in Sicily on behalf of the firm for want of capital, the defendant instructed the merchants of Sicily that, while a dispute was pending between the partners relative to complainants putting up the balance of their capital, the business would be conducted by defendant, thereby making himself personally liable, and it was only by defendant thus acting that consignments of fruit were obtained.

(*b*) The letters of credit were obtained in defendant's name solely for the reason above mentioned ; funds were advanced to the merchants of Sicily at the same rates as other houses receiving consignments, because rates could not be stipulated, as, at that time, competition was great, and consignments were given to the house advancing the most.

(*c*) The firm name was resumed on the return of Scalzo from Italy, at which time all the parners furnished the balance due on the capital stock. In a letter (p. 153, see Oteri, p. 162), dated November 14th and marked Exhibit, P4, written by A. Di Christina, a member of the firm of Randazzo & Di Christina, complainants, it is plainly stated that all difficulties had been amicably arranged, Mr. Randazzo having paid the balance of his capital. This shows that the previous action of defendant in transacting the business in his own name was ratified and ap-

proved by his partners, and that all difficulties existing between them at that time had been adjusted.

(*d*). Defendant's letters alleged to be derogatory to the character of his partners, were written in the utmost good faith, as will be seen by his testimony (pp. 162, 166), with no wish to injure his partners, but on the contrary, in the interest of the firm and to preserve the firm's business. Not only did the surrounding circumstances justify the writing of such letters, but the evidence introduced shows that there were grounds therefor, and that charges derogatory to the character of his partners had been made, not by the defendant, but by others, and consisted of actions imputed to them before the formation of the partnership, and of which defendant was entirely ignorant until after he had arrived in Italy. That when complainants called on defendant to see the books, as is alleged, they were in the company of friends, and the demand was made so roughly that defendant feared trouble, and thereupon demanded of them a receipt for the books, which he wrote, and on their refusing to give a receipt for the books the defendant, in order to prevent their destruction or loss, put the books in the safe, closed the same, and left the office in their charge—see pp. 171, 172.

(*e.*) Defendant ordered that fruit consigned to the firm should be sold for cash, and it was so generally understood, when one of the buyers, John Zucca, who is proved to have been then entirely solvent (Onorato, pp. 70, 71), purchased $2,375 of the fruit consigned to the firm. After the purchase he failed to pay cash, the market dropped in prices, and to have cancelled the sale, and had the goods sold over again, would have resulted in a loss of at least $1.00 per box, and, as Mr. Onorato, the auctioneer, offered to discount the whole bill at 5 per cent. (p. 227), and he and others assuring defendant of the solvency of Zucca) defendant deemed it to the interest of the firm to accept Zucca's note at thirty days for the amount, the firm not being able to stand a discount of 5 per cent., when their net commission was

only 3 per cent., and it is proved that the same buyer at that time had large credit with all the importers in the market—Oteri, pp. 172, 173.

(*f.*) The charge of $140 for rent is just and correct, as the firm had signed a lease and given its notes for the same, which constituted a liability of the concern. There is no proof in the record that defendant used the leased premises for his individual business.

(*g.*) The amount charged V. Scalzo was for his individual business, and not for the business of the firm. This is shown by the bill of exchange (p. 34) which was given to him, drawn by the Union National Bank in favor of Joseph Oteri & Co., and endorsed by them "pay to the order of Vincenzo Scalzo," and also endorsed by Vincenzo Scalzo himself, the said bill of exchange being marked document D1. (See Oteri, p. 169.) This is also specified in the check book and check stub, No. 4, which Mr. Terni, the book-keeper, has marked for account of Vincenzo Scalzo; the charge is also made in the same handwriting of said clerk, under date of November 25th, in the cash book, at page 5, reading: "Exchange £200 for account V. Scalzo"; and it is also charged in the ledger, Exhibit Jt, V. Scalzo, private account, as so much cash paid him—See Oteri, p. 209; Terni, p. 65.

(*h.*) The amount charged to Randazzo & Di Christina was advanced at the request of Randazzo to G. Di Christina, brother-in-law of Randazzo and father-in-law of A. Di Christina (Oteri, p. 170). A letter written by A. Di Christina, one of the complainants, November 14th (see pages 153, 163), addressed to G. Di Christina, in the name of the firm, acknowledges receipt, through Scalzo, of 246*l.* 16*s.* or $1,212.15, and for which amount the firm held Randazzo responsible.

(*i.*) The amount charged to S. Gioe is not a loss, but an outstanding credit. Defendant, through an attorney, effected a compromise with S. Gioe for the sum of 10,000 liras, as follows:

Cash	liras, 2000	[or $385 95]
Gioe's note, one year	" 2500	
Gioe's note, two years	" 2500	
Gioe's note, three years	" 2500	
Cash paid for fees and other expenses	" 500	
Total liras	10,000	

The $385.95 cash and three notes are held by defendant, subject to the decision of the court—p. 154; Del'Orto, p. 150; Master's report, p. 236.

(*j.*) The amounts charged to each partner, as sums of money drawn by them, are established by the books in the handwriting of the common clerk, which were open to their inspection, and are sworn to by said common clerk.—See testimony of Terni, p. 64 and p. 218.

The testimony of the various witnesses in this case, as to what passed in relation to the animadversions which had been made upon the characters of complainants to the defendant, none ever having been made by the defendant himself, the court should look to the fact that none of these circumstances have anything to do with the business of the firm; that while it was going on defendant did everything for the good of the business and nothing against the interest of the firm or of his co-partners. We consider that this matter has been unhappily interjected into this case, and has nothing to do with it. All that defendant has done is shown by the books, and the books corroborate the testimony of the defendant in every particular. We consider the only question to be examined in the case now, is whether the books are correct, and, in view of all the evidence as to the items contained in the books, what remains out of the assets of the partnership belongs to the several partners. The defendant has produced the old books, all the documents of the business of the concern; has had the old books put into a more business-like shape; the new books are sworn to by the witnesses who made them, and the correctness of the old books is

proved by Terni himself, who kept them, and there has been nothing whatever, beyond the testimony of complainants, to disprove any of the entries.

We do not apprehend that the testimony of the defendant must be disregarded, because all of his statements are corroborated by the books and by the testimony of Terni that the books are correct, and we therefore answer to the various items under this head, as follows:

a. Scalzo is charged with cash handed him in Catanio, liras 1000, equal to..... $190 40
Cash paid for bill of exchange as above set forth, £200, equal to..... 980 00

Total to Scalzo's debit.....$1170 40

The above items are properly entered by Terni in the cash book kept by him, exhibit Lt, page 3, as one of the opening entries in the book, and also are entered in the ledger kept by Terni, marked exhibit Jt, on page 2, and, therefore, these entries are not entries dictated by defendant to an expert, as alleged.

b. Randazzo and Di Christina and A. Di Christina are charged with the amount advanced to G. Di Christina for their account, which item is the first entry on Terni's cash book in his own hand writing, marked exhibit Lt, $1227.15, less $15, for which they received credit, leaving to their debit, $1212.15. Amount of cash handed A. Di Christina while in Sicily, $21.60, making the total debit of Randazzo and Di Christina, $1233.75.

c. Defendant drew from the cash of the firm, $1250, because the other partners had drawn abont the same amount, and this was done in due form and without any concealment; no entry was made in the old books because defendant had no book-keeper at that time, Mr. Terni having left ten days previous to the transaction.

Defendant does not dispute the dates of the sales of the cargoes of the various steamers, which were already in transit

when complainants took proceedings in court. Defendant was in duty bound to protect the interests of the firm and liquidate the affairs by going on with the business and finishing it up so far as had been commenced. Defendant undertook no new business after the complainants went to court.

Ordinarily, when three parties agree between themselves to furnish certain capital and embark in certain business, each owes to the other his portion of that capital, but when it is agreed in the articles of co-partnership that the whole management shall be in the hands of one member, who shall command all the capital of the concern, have charge of all the cash and all of its assets, then his partners owe to him their portion of the capital, and his portion he only owes to himself. Therefore, when we show that the defendant carried on the business of the firm with the full capital of $15,000, it is demonstrated that he has complied with his obligations.

It is entirely out of the question that after a firm was organized and commenced operations, that any one or more of the co-partners should have a right to ask for a *revocation* of the partnership on any account whatever. The most they could do was to ask for a dissolution, and for an accounting. We cannot see, therefore, how the complainants can possibly ask that the defendant return them their capital intact, with interest, when they acknowledge that large amounts have been expended from that capital for account of the firm, and that the firm has had large business prior to the demand for its revocation.

2d. In considering how much should be allowed the defendant for the cost and expenses of the trip to Sicily and return, the acts of the parties at the time in question should be considered. The fact that books were opened after their return, by the book-keeper who had been selected by common consent, and that the first entry made by that book-keper in opening those books was a charge for traveling expenses, amounting to $2,538.82, and taking further into consideration that that entry was made to the knowledge of complainants, who had access to the

books, and considering the further fact that the book-keeper was one of the party who traveled to Europe, and knew whereof he wrote, there is no evidence in the record which would justify a refusal to allow the amount as charged.

3d. Everything that was done by the defendant having been done for the good of the firm, and his best judgment having been used, and having been done with the full knowledge of complainants and their common clerk, and the complainants having ratified what had been done by the defendant by subsequently putting up the remainder of their capital, their demand now, that the defendant should be made liable for all of the losses of the business of the firm ought not to receive any attention.

4th. We insist that there is nothing in the evidence of the defendant which will justify its being disregarded, but, on the contrary, in everything that pertains to the management of the business, the receipts and expenditures thereof, the defendant has been sustained by the books and by the book-keeper.

5th. The alleged refusal of the defendant to allow the complainants access to the books and papers of the firm is stated too broadly. The only book to which the defendant refused access was the letter book, and at that time he was in fear of his co-partners, and his statement that he only refused access to that book because they declined to receipt to him for it is entitled, under all the circumstances of the case, to great credit.

6th. In a settlement of a partnership in equity it is utterly impossible for any Court to order that one of the defendants should stand all the losses of the concern, no matter what the conduct of that defendant may have been.

7th. As to the transaction with John Zucca, we would say that Zucca was not a personal friend of the defendant, nor a more intimate acquaintance than said Zucca was with any of the complainants ; that in the entire transaction, as explained above, defendant acted in the utmost good faith, and managed the busi-

ness as he believed, and as he had a right to believe for the best interests of the concern; the sale of fruit had been made to Zucecca for cash and Zucca could not pay it. The price of fruit had fallen, and there was a choice to be made, either to take Zucca's note for the amount due by him, or to make a loss by reselling the fruit. The defendant had the most positive assurances of the responsibility of Zucca. The auctioneer who had sold the fruit and knew all the parties well offered to discount Zucca's note for 5 per cent., what further assurance could defendant have had of the solvability of Zucca? If he had accepted Onorato's offer to discount Zucca's note the firm would have lost 5 per cent., more than the whole of their commissions amounted to, which were only 3 per cent. The defendant was called upon to exercise his judgment; he exercised his judgment to the best of his ability, and took the note, and it would not be fair to charge him with the loss resulting from the failure of Zucca to pay.

We have agreed to omit from the printed transcript the books and vouchers filed by the defendant upon the call of the complainants, and offered in evidence, because the evidence of the witnesses and the report of the master fully show their contents, but they have been brought up with the record and are on file in the clerk's office—p. 250.

We respectfully suggest, that, following the order of this Court in the case of Kimberly vs. Arms, 129 U. S., 530, the decree in this cause should be reversed, and the cause remanded, with directions to confirm the report of the special master.

All of which is respectfully submitted,

JOSEPH P. HORNOR,

GUY M. HORNOR,

Of Counsel for Defendant and Appellant.

NEW ORLEANS, 20th November, 1891.

FILED.
DEC 14 1891
JAMES H. MCKENNEY

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 166.

JOSEPH OTERI, Appellant,

vs.

VINCENZO SCALZO.

BRIEF FOR APPELLEE.

CHARLES W. HORNOR,
GEORGE A. KING,
Solicitors for Appellee.

H. L. McQUEEN, PRINTER.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

JOSEPH OTERI, Appellant,
v.
VINCENZO SCALZO. } No. 166.

Brief for Appellee.

The pleadings appear to be fairly set forth in the brief filed for appellant, pp. 1–27, and need not be here recapitulated. The decree appealed from was as follows (Record, pp. 246, 247):

CIRCUIT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF LOUISIANA.

NOVEMBER TERM, A. D. 1887.

VINCENZO SCALZO *et als.*
vs.
JOSEPH OTERI. } No. 11,059. In Equity.

"This cause came on at a former day of the sessions "of this court for final hearing and to be heard on the ex- "ceptions of the complainants to the master's report herein "and was argued by counsel for the parties respectively "and submitted; whereupon and upon consideration "thereof it is now ordered, adjudged, and decreed that the

"complainant, Vincenzo Scalzo, for himself and as sub-
"rogee of the other complainants, the firm of Randazzo &
"Di Cristina, do have and recover of and from the defend-
"ant, Joseph Oteri, the sum of ten thousand dollars
"($10,000), the amount put in the partnership by said
"complainants, less two-thirds of $2,538.32, expended in
"the interest of the partnership, with legal interest, to wit,
"five per cent. per annum, thereon from the date of judi-
"cial demand, June 11th, 1885, until paid; that the other
"exceptions be overruled, and in other respects that the
"master's report be approved and confirmed. It is further
"ordered, adjudged, and decreed that the complainant's
"bill of complaint be dismissed without prejudice to their
"right in some other form of action, as they may be
"advised, to prosecute the matter of defamation of char-
"acter set forth in the bill of complaint. It is further
"ordered, adjudged, and decreed that the costs be paid by
"the defendant.

"Dated April 12, 1888.

"(Signed) EDWARD C. BILLINGS, *Judge.*

"Filed April 12, 1888."

We pray for an affirmance of this decree.

The amount of the expenses of the trip made to Europe for the benefit of the partnership by the plaintiff Scalzo, the defendant Oteri, their partner Di Cristina, and their clerk Terni, was a subject of serious contest in the court below, but the decree conceded to Oteri the amount claimed by him for those expenses, and there being no cross-appeal, that subject is not now open to dispute.

While no opinion was delivered by the court below, the ground upon which it proceeded is clear from the terms of the decree itself. These are evidently that Oteri having taken the money of his partners, and used it for the transaction of business in his own individual name, and for his own profit, while traducing the good name of his partners, and dissuading correspondents from sending further consignments otherwise than in his own individ-

ual name, had so grossly violated his obligations that the partnership was subject to be rescinded at their option, and their money returned to them with interest from the date of judicial demand, June 11, 1885, upon which day the present suit was instituted.

The sole question, therefore, presented by the Record is, Did the court err in rescinding the partnership contract?

The master's report finds as facts, *inter al.*, the following:

"That at the time of the departure for Europe, Scalzo "had paid on account of his share of the capital $2,000, "and Randazzo & Di Cristina had paid $2,500." (Second Finding, Rec. p. 233.)

The master entirely omits finding the capital paid in by Oteri.

Oteri returned from Europe, "perhaps about the end "of September." As soon as he returned, Randazzo called upon him and "he told me that, if I did not pay the bal- "ance, $2,000 of capital, he would have to dissolve the "firm." (Rec. p. 76.)

Scalzo says:

"When I returned to New Orleans, I saw Mr. Oteri, who "said he wished to dissolve the co-partnership on account "of the money not being turned in. He told me that the "Sicily business didn't pay; that it was not good, and that, "if I did not give him the money at once, he would dis- "solve the co-partnership, and so I gave him the money, "and then Mr. Randazzo also gave him money." (Rec. p. 28.)

Early in October, 1884, Oteri wrote to European correspondents—

"During my travel in Sicily, having learned that one "of my partners did not have a very good reputation, I "withdrew, and therefore the business will be continued "in my name." To Bellar & Co. (p. 16).

"I can not officially notify you of the dissolution from "my partners, but all the same I start anew and continue "the business in my own name, and as you see the en- "closed letter of credit [£500, $2,500] is in my name "only." (Herzel, p. 16.)

Again,

"I can not officially notify you, having withdrawn "from Messrs. Randazzo & Di Cristina, until the arrival of "Mr. Scalzo. In the meantime business transactions must "be made in my name only, as it is almost certain it will "so continue. I enclose you two letters of credit, each for "£500" [*i. e.* $5,000]. (Rec. p. 17, Filiberto.)

To Randella at Messina, enclosing £500 ($2,500), he says:

"During my short stay in Sicily I ascertained that one "of my partners does not enjoy a good reputation, and not "wishing to have my name come in contact with people "of immaculate respectability, I decided to withdraw; "therefore the business will be conducted in my own "name." (Rec. p. 17.)

A similar letter, with £500 to Costarelli & Figli, Messina (Rec. p. 18). To Tarro, he writes:

"Sent letter of credit in your favor by mail, £500; for "the present and until our Mr. Scalzo returns, business "will be transacted in my name, because, as you will "know in a short while officially, Messrs. Randazzo & "Di Cristina will have no further transaction with me." (Rec. p. 19.)

Two other letters to different parties enclosing letters of credit for £200 and £300 ($2,500) in the name of Joseph Oteri are on Record, p. 19.

The master's finding is: "That Oteri, while in Europe, "made business arrangements in the interest of the firm." (Rec. p. 234.)

If he did, his letters subsequently annulled them all.

The fourth finding is: "That Vincenzo Scalzo remained " in Europe for some time after the departure of Oteri for " home. Scalzo, while in Europe, had no right to make " contracts for the firm," etc.

The fifth finding is: "That, some time after Scalzo's " return from Europe, near the middle of September, as " near as the master can determine, Scalzo and Randazzo " & Di Cristina paid the balance due by them on " the capital of the firm, viz.: Scalzo, $3,000, and Randazzo " & Di Cristina $2,500." (Rec. p. 234.)

The sixth finding is: "That the books of the firm " were not kept in strictly mercantile manner."

The seventh finding is: "That Oteri did, for a time " after the formation of the partnership, and before the " 14th November, 1884, drop the name of the firm and " carry on the business in his own name."

The eighth finding is: "That Oteri did not furnish his " co-partners monthly trial-balances."

The master admits that these facts—

"Show violation of the act of partnership by Joseph " Oteri in relation to the books, the non-rendition of the " monthly statements, and in conducting the business in " his individual name. In explanation, he states that he " was compelled, in the interest of the firm and for his " own protection, to carry on the business in his indi- " vidual name by a number of reasons, and principally by " the failure of his co-partners to make timely payment of " their share of the capital." (Rec. p. 234.)

The ninth finding of the master is inserted in his report before his above admissions, and reads:

"That on the 14th November, 1884, both Terni, the " book-keeper, and A. Di Cristina, the partner of Randazzo, " wrote with the approval of Oteri, to their correspondents " in Europe, that all the troubles between the members of

"the firm of Joseph Oteri & Co. had been adjusted; that "Vincenzo Scalzo and Randazzo & Di Cristina had paid "in their share of the capital, and that the business would "thereafter be conducted in the firm's name."

And the master concludes that—

"On the 14th November, 1884, all the acts thereto- "fore committed or omitted by any of the partners in "violation of the partnership agreement were mutually "condoned, and that harmony was restored between the "members of the firm, A. Di Cristina himself actively "aiding in making the announcement." (Rec. pp. 234, 235.)

But the court could not, and did not take this view of the case. It was plain that the partners, Scalzo, with Randazzo & Di Cristina, had not violated the partnership-articles in not completing the capital on November 14, 1884. But Oteri had violated his duty as a partner by mixing up at the very start the firm's money with his own and so using it. He has never yet fully separated the firm's money from his own. The firm's bank account was partial only when first opened by him November 15, 1884. He never complied in good faith with the partnership articles. The fifth article as to the books and trial-balances has resulted in an utterly unintelligible set of books, from which no trial-balances could, on the confession of his own witnesses, be made; and for this purpose they were compelled to make a new set of books, and from these to furnish the accounts called for; and the complainants were not even informed or called upon to notice or take part in their preparation. (Rec. pp. 147, 148, Dell 'Orto; pp. 225 and 226, at foot, Bein.) And when an examination of the books, papers, etc., was desired by complainants, Oteri told the applicants, "You "have got to go to court for them." (Rec. p. 28, Scalzo; p. 77, Randazzo; p. 67, Allessi; p. 71, Huber; p. 73, Morana.

Now Oteri says he is no book-keeper, and knows nothing of book-keeping. (Rec. p. 216.)

"I don't understand any of the accounts. I left it to "the book-keeper." (Rec. p. 210.)

We submit that in view of the third section of the partnership articles, this defense for violating the articles of partnership by keeping of what are equivalent to no commercial books whatever, is altogether unsound. Throughout this entire business, from the notarial act of June 24, 1884 (Rec. p. 10) down to his final testimony, December 30, 1886 (Rec. p 23) Oteri claims to be a merchant, competent in every way to carry on the business of Joseph Oteri & Co.; and in this character he now poses before this honorable court; whilst every printed page and every written document and paper, together with all parts of the parol evidence in the Record exhibit him as entirely lacking in the essential elements of such a character, and utterly incompetent when he made his contract of partnership to carry it out.

The appellant strives to shelter himself behind A. Di Cristina, who was a partner of Randazzo. In 1886 he was 24 years old, and his father, Gaetano Di Cristina (Rec. pp. 49, 176) and all the other witnesses testify as to his good character. Terni, when asked "Do you know whether there was anything the matter "with him—whether he was sick?" replies: "Well, I heard "someone say there was something the matter with his "brain." (Rec. p. 65.) And when Terni is asked: "Did "you ever receive any instructions from Mr. Di Cristina?" he says: "No, sir; I always considered Mr. Joseph Oteri "to be my direct boss." (Rec. p. 220.) Morana says, when asked, "Was he in good health at the time you knew "him?" replies: "He was a little out of his mind." (Rec. p. 74. See also what Scalzo says on cross-examination.

(Rec. p. 34.) Neither party called him as a witness, nor does it appear distinctly why, by the partnership contract, two per cent. on the profits was allowed him at the end of each of its business years "as an extra compen- "sation for services to be rendered by him to the business "of said firm," by article sixth of the act. (P. 11.) But as Terni was to receive eight per cent. on the like profits per year in addition to his clerk-hire, it may be fairly presumed that this young man's services were those of a mere supernumerary, and not in the nature of an active member of the firm. The Record shows he performed no important acts whatever; that he never examined the books; and if he had, that he could not, by any possibility, ever have understood them. He knew nothing of what was going on, and the articles never intended that he therein should have any voice. By the third article, Joseph Oteri was to have the exclusive control and direction of its affairs. The entire Record shows the undue weight given by the master to the very trifling participation of this young man in the leading facts of this case. Besides, the letter-book had been purposely mutilated, and this important fact fraudulently concealed.

Randazzo, the senior partner in the firm of Randazzo & Di Cristina, was his uncle by marriage; his father was one of the most prominent third persons dealing with the partnership—Gaetano Di Cristina—of whom hereafter. Randazzo was over 40 when the partnership was entered into. April 22, 1865, he was sentenced in Sicily to fifteen year's hard labor and five year's police supervision, for having attempted to commit an extortion on and seizure of Baron Bordonaro, January 28, 1863, and afterwards, a decree that no further proceedings were to be taken against him, July 12, 1866; and "on the 14th of May of "this year [1886] the order of arrest should be revoked "and set Randazzo free from any further proceedings."

(Rec. p. 155.) The whole affair is plainly and intelligently set forth in Randazzo's testimony on Record, pages 37 and 38, carrying with it complete conviction of its truth and explaining why he was pardoned.

"I was working for Baron Bordonaro. I had the gar-
"den close to his. In this garden there was an overseer
"who had a daughter, and I was courting her, and every
"time the Baron went there he had connection with her.
"I found it out and I did not want her any more, as I
"did not want her, and this party, being an aristocrat, he
"wanted me to marry her, and I wanted to have him ar-
"rested. I told him to pay me everything that he owed
"me, and he did not want to pay me. Then I found him
"and made him pay by force, and he paid me."

"Q. And then the Baron had you arrested?
"A. Yes, sir; he had me arrested.
"Q. And that is the crime you are charged with?
"A. That is the crime I was charged with.
"Q. Did the Baron wed or marry the girl?
"A. No, sir; he wanted me to marry her."
No cross-examination. (Rec. p. 38.)

All the parties to the suit are Italians born. Randazzo can neither read nor write either Italian or English. (Rec. p. 81.)

Vincenzo Scalzo is domiciled at St. Louis (p. 38), and keeping house. (Rec. p. 157.) He can not read or write English. (Rec. p. 33.) He "enjoys a good reputation; "he is a property-holder in Milazzo." (Rec. p. 58.) His moral and business reputation is good. "I have always "said that Vincenzo Scalzo was an upright, honest man." (Rec. pp. 58, 59.)

Joseph Oteri, aged 40 (Rec. p. 175), is domiciled in New Orleans and a citizen of Louisiana (p. 192).

The partnership began on July 1, 1884, and with a trip to Europe of Oteri, Scalzo, Di Cristina and the confidential clerk of the concern, Terni, "in the business "interest of the firm." (Master's report, p. 233.) Randazzo

had previously mortgaged his property to Oteri for $2,500, and returned Oteri (p. 147) his check for the same $2,500, on account of the contribution of $5,000 due to the new firm by Randazzo & Di Cristina. (Rec. p. 80.) "Our arrangement had been each to pay $2,000 on the "departure of those gentlemen in order to defray the ex- "penses and make advances as any merchant would think "proper to ship here." (Rec. p. 76, see also p. 180.) Before leaving New Orleans, Oteri drew, July 10, 1884, two checks for, together, $400; and one as "agent" for $996.69 (Rec. pp. 60 and 61), all three on the Louisiana National Bank. This fixes the date of the trip from New Orleans. Randazzo accompanied the party as far as St. Louis, he having a branch house in that city. Here "Mr. Scalzo received us, welcomed us to his "house, invited us to his house. We had a big dinner there. "Well, we were detained a couple of days." (Oteri, Rec. p. 157.) Arriving in New York, Oteri and Terni went thence to Liverpool, and then to Sicily *via* Malta; Scalzo and Di Cristina went direct. (Rec. pp. 158, 62.)

Oteri reached Palermo and called on G. Di Cristina, with Terni, and on other shippers; and then on Mr. Gioe (p. 159) who tells Oteri, *as he says:* "I will not recognize "any one of your firm but yourself." From Palermo, the two went to Messina, where they called on several fruit shippers who "were to have a great reception; invited "me to dinner," etc. The two remained in Messina about forty hours. The following day all this courtesy and smiling appearance toward them was changed the other way. Oteri was ashamed of himself to walk around the streets, the cause of which was found out afterwards. (P. 160.) The two after leaving Messina came back to Palermo, and there came Scalzo and Di Cristina from quarantine for fifteen days, and they asked what had been done, and were told that the two had arranged

everything satisfactorily. (P. 160.) But not a word about Randazzo as a first-class criminal, Scalzo as a raper (ravisher, rapist), Di Cristina, a dude, and Oteri as something worse than all the other three put together; Mr. Scalzo was merely told by Oteri that he had heard that there was a little dissatisfaction existing in Sicily against the firm. Of course, this is Oteri's statement in his direct examination, on the truth of which he alleges he hurried up himself and Mr. Terni to come back to the United States; and, it must be added, with a determination to dissolve the firm on arrival on the part of Oteri and continue the business in his own name and for his own account; and this within three calendar months from the beginning of the partnership.

In carrying out this determination Oteri calls upon Kohn, the president of the Union Bank, and makes arrangements for the issuance of a large amount of letters of credit on London for £6,000 ($30,000) the day after his arrival home—not on the credit or name of the firm, or even on his own personal sufficiency, but on a deposit of $10,000 worth of city premium bonds; and on *October 7, 1884*, wrote the various letters in his own name, announcing the dissolution of the partnership, as set forth on Record, p. 15 *et seq.* These arbitrary acts of one of the partners; his adherence to the slanderous accusations against Randazzo and Scalzo which were without the slightest legal foundation or excuse; his secretly keeping them in ignorance of what he had done; his gross abuse and open violation of the articles of co-partnership as to the books and accounts of the firm; his flagrant breach of the trust and confidence reposed in him by his partners; his palpable breach of social duty; in short, his total disregard of all commercial honor and probity, coupled with an intense ignorance of business affairs, completely justified the court below in a total rescission of the entire contract of part-

nership. And although no reasons are set forth in the decree, yet the *suppressio veri* and *suggestio falsi* of the defendant are too clear and manifest from this Record, coupled with a violation of a contract wholly in his favor made by his partners with an implicit confidence in his integrity, to need any further demonstration of its correctness. The man who could turn upon his associates to injure them in the way Oteri practiced, appeals in vain to a court of equity for relief.

II.

The violation by the defendant of the expressed conditions of the partnership-agreement, so fully admitted in the master's report, have never been "condoned," as has been stated—still less have they been ratified, confirmed and approved. On this point, the decree shows the opinion of the Circuit Court. Abstracting the testimony of the defendant, who, on this and all other points is entirely unreliable and *non mi ricordo*, it is quite clear from the evidence that no sufficient knowledge of Oteri's actions, as manager of the firm, from his setting out from New York (say early in July, 1884) until the final explosion in January, 1885, had ever been fully communicated to his associates. Oteri was plotting against his partners in Liverpool and New York, both going and returning, with his silent clerk, Terni. (Rec. pp. 138, 161.) He was carrying on a deceitful game with Filiberto, who— though at first impressed with the bad faith, shifts and fickleness of Oteri, which "we can not understand" and "we can-"not accept your doing" (this in reply to a cablegram "credits cancelled; remittermo receve grafo" (Rec. p. 85);) receiving two letters of credit for £500 each from Oteri personally (Rec. p. 17); writing in reply, "We have "noted the dissolution of the firm of Joseph Oteri & Co. 'and that you intend to conduct the business by yourself.

"We want further explanation of the matter" (Rec. p. 84;) —afterwards, though evidently in the interest of Oteri, yet showing his exact knowledge of Oteri and his relations with his partners, turns about and says: "I have had "business with them as the firm of Joseph Oteri & Co., "but not as individuals" (p. 50). On this point, see particularly letters of October 31, 1884, and December 21, 1884 (Rec. p. 84 *et seq.*), complaining of the cancellation of credits, November 5, 1884 (top of p. 85). The date is important.

"My transactions with them took place in October and "November, 1884," etc. "The cause of my making ship- "ments to the firm was that *they* gave me a letter of credit "for that purpose. I ceased to do business with the *firm* "because the credit was cancelled. Joseph Oteri wrote "me about *February, 1885*, that he had trouble with his "partners and that *the firm was dissolved*, and that he was "carrying on the business in person and on account of "himself solely. I never made any statement in writing "or otherwise to Joseph Oteri concerning 'Scalzo, Di Cris- "tina or Randazzo' in any manner or sense. I never said "a word, good, bad or indifferent, to Joseph Oteri about "Cristina, Randazzo or Scalzo. Joseph Oteri never re- "quested me to do business with him alone, and not with "his firm."

On his cross-examination, he again denies that he ever did business with Oteri alone.

The transactions between him and Filiberto became such that "the American Consul at Palermo was sus- "picious that something was wrong, and refused to issue a "certificate 'to order'; hence I was compelled to make the "shipments to Joseph Oteri & Co." etc. (Rec. p. 51.)

All this is plain enough. But Filiberto goes still further in aid of Oteri. After his peremptory denials of ever saying a word against Randazzo, he now testifies: "The "reputation of Randazzo in Palermo is bad. I know this

"personally and by public opinion." This expression of opinion follows on the statement that "it is publicly "known that Ignazio Randazzo was tried for a grave crime "and *condemned to be hanged*, but was afterwards accorded, "I think, a new trial, and was sentenced to fifteen or twenty "years in the penitentiary at hard labor, whence he appears "to have escaped and gone to the United States." (*Ibid.*) He is entirely silent as to the recall of the sentence many years before. The law of commerce is said to be the law of honor. How Filiberto could begin and carry on business with a man as Randazzo is represented by him, is quite hard to conceive; but it is yet more difficult to believe that Filiberto never said or wrote a word, good, bad or indifferent, to Joseph Oteri about Randazzo.

But when did this bad reputation of Randazzo first reach the ears of Oteri? When did he first hear that Scalzo was a raper, and young Di Cristina a dude? And when did he communicate to Randazzo and Scalzo and Di Cristina his objections to them as partners on these accounts? The Record is silent on these points. So far as Oteri's partners are concerned, they never had the slightest information that he was a whore-master; a far greater and more heinous defect in reputation, if true, than a merely alleged assault with intent to rape (Rec. p. 231) never prosecuted; or an attempt to commit an extortion on and seizure of the Baron Bordonaro to pay for work and labor performed, and justly due; the proceedings in which "concluded that the order of arrest "should be revoked and set Randazzo free." (Rec. p. 155.)

But let us assume, as seems to be the only benevolent interpretation of Oteri's testimony, that he did hear on his visit to Sicily unfavorable reports as to Randazzo's excusable escapade (when he was twenty years younger at least); and of a criminal charge, never prosecuted, against Scalzo (when he was seven years younger) after his re-

turn therefrom, for the first time, as he contends, and that he then wrote the letters complained of; still, he should have at once made known these, his objections, to his partners. The pleadings, however, aver—

"Fourth. Orators show that on the 7th of October, "1884, said Joseph Oteri, in violation of said contract of "co-partnership (and with malice, without cause probable "or otherwise and in bad faith, for which orators reserve "their action for damages) after said contracts had been "made in good faith for said firm and before any partnership "assets or capital had been used, wrote to Costarelli & Co., "and Joseph Ballero & Co., of Messina, and G. C. Herzel, "of Palermo, and others, that all contracts made for such "firm should enure to his private benefit, and he would "not recognize his firm therein."

To which Oteri answers:

"Fourth, that as to the matters and things set forth in "the fourth article of said bill he says that the same are "not true." (Rec. p. 2 and p. 6.)

The master, whilst seeing full proof of plaintiff's allegations finds that all Oteri's offenses were condoned on November 14, 1884, when letters were written by Terni, book-keeper, Di Cristina, Allessi and Morana, that—

"Mr. Oteri, who thought of dissolving from his partners, "and now having all arranged as before agreed, our firm "will continue under the same style of Joseph Oteri & Co., "composed of the same partners as you learned by our "circular." (Letter to Filiberto, Rec. p. 153.)

On same date to G. Di Cristina:

"Mr. Randazzo, having established everything by pay-"ing the balance, his share of capital of $2,500, in full "for the $2,500, our business will continue under the same "style of Joseph Oteri & Co., composed of the partners, "*whom you well know.*" (Rec. p. 153.)

On the same date to S. Gioe:

"We write the present with the sole scope of inform-
"ing you that on arrival of Messrs. Scalzo and Di Cris-
"tina, we have arranged everything respecting our firm."
(Rec. p. 153.)

All these letters are written in the name of Joseph Oteri & Co. (Rec. p. 162, at foot.) The letters were written by Terni, A. Di Cristina, Allessi, and several others for Oteri. (P. 163).

The only matter suggested, even, as being arranged, was the payments of amounts due by Randazzo and Scalzo for capital. Oteri never paid up his $5,000 and never opened any bank-account for the firm until November 15, 1884 (and then a fraudulent one); but, whilst in open default himself, was complaining to the firm's customers of his partners' failure in this respect; and although he had advanced, as he says, *for the benefit of the firm*, $10,000 worth of premium city bonds, as he had a right to do under partnership-article No. 6, *but not in his own name and for his own purposes alone*, and without notice of any kind to his partners; yet on January 24, 1885, he asks for $1,500 more from each of his partners. (Rec. p. 193.) This request they properly ignored.

Terni swears that it was impossible for him or any other book-keeper to keep a correct set of books under Oteri's conduct of the business. Terni is first called for the plaintiffs (Rec. p. 61) and afterwards for the defendant. He says (Rec. p. 217 *et seq.*) that he began to keep the books in the office, corner Canal and Front Streets; believes the books were bought after Oteri and himself returned from Europe. He (Oteri) was in the office every day. Neither Scalzo nor Randazzo did he ever see look at the books. He never saw them write in the books. (He recognizes the book he is shown, "Exhibit Lt.") The

purpose of this book was to keep the petty cash in, but it was so often changed. "You see, here is Mr. Oteri's handwriting." "Here is writing by me.

"Q. Mr. Oteri and you both kept the book together?

"A. Yes, sir."

Then came the general question:

"Now, were the entries made by you in these books "which you have examined correct entries?

"A. Well, I suppose so. I told you they were changed "every day. The items were so often changed that I "could not exactly tell you. There was too many "changes. There was no book-keeper who could keep a "regular book.

"Q. Why not?

"A. Because one day they would take this out and the "next day take that out, and so many other things.

"Q. Who said that?

"A. Mr. Oteri.

"Q. Did anybody else?

"A. No, sir; nobody else. I never received any in-"structions from anybody else."

And then asked,

"Do you know of any entries in those books in your "handwriting that is not correct?

"A. No, sir."

(Rec. pp. 219, 220, *Terni, recalled and testifying for defendant.*)

It also appears that Terni voluntarily left the employ of the firm. Then Allessi was employed; no date discoverable, but, then came the final explosion, on his communication to Randazzo of the condition of the books and the business (pp. 66–68). Morana took a hand at the books afterwards, and he gives us the date. "About the "latter part of January, 1885, I was called by Mr. "Oteri to make some Italian correspondence and some

"account sales. Was employed for eight days." "Do you "know who succeeded you?" "A. I heard Mr. Terni was "working for him." (Rec. pp. 72-74.) The books were referred by Oteri to Dell 'Orto and Bein, and the new set of books was started on January 26, 1885. (Rec. p. 149.) Bein gives no dates. Dell 'Orto says that Oteri called upon him on a certain day, "I don't remember the day, but he "was all excited, and he stated he was in a lot of trouble." "Well, I was asked by Mr. Joseph Oteri to make up a bal- "ance-sheet of his business, as he would require it in "court" (p. 147). It is presumable that the trial-balance of December [no specified day] was made by some one who then actually did perform a thing impossible—*i. e.* balance a set of books that could not be balanced by any book-keeper. (Rec. p. 206.) The next trial-balance of June 1, 1885 (pp. 7, 8), is the joint work, ostensibly, of Dell 'Orto and Bein; really, of Dell 'Orto; of Bein, in form, but in substance, for Oteri alone. These are the only two trial-balances ever furnished. The final one, if correct, is accompanied by "Exhibits B" (p. 8), a statement of assets and liabilities; "C" (pp. 8, 9), profit and loss; and "D" (p. 9), statement showing what is due each partner. *They were all approved and recommended for adoption by the master.*

We direct attention to these documents to show two things: *First*, that the decree of the court complained of was eminently correct and proper, which rejected them entirely, with a single but partial exception—the only item which clearly inured to the benefit of the partners, viz., the expenses of the trip to Europe and back, two-thirds of $2,538.32. *Second*, to prove from the Record the gross injustice which would result from any sanction by this court of their correctness, they all being admittedly *ex parte*, and intentionally fabricated under Oteri's dictation.

As to these exhibits, the first thing to be noticed is,

that on June 1, 1885 (as well as on January 18, 1886, when their filing took place), Oteri had, by his admission, cash belonging to the firm of Joseph Oteri & Co. amounting to $3,657.26, which funds, although the partnership had been virtually dissolved for months, and Oteri in default for not bringing the money into court, he still continues to use for his own purposes without a shadow of law or justice, or any security for faithful care.

But, on the face of the paper the charge in "Exhibit B" (Rec. p. 8), "Amount due Avendano Brothers, $140," is incorrect. Why? "When did the lease commence? A. "The first of October. Q. Was it not the first of No- "vember? A. The lease will speak for itself." (P. 13.) The lease is not called for, and it is not produced. Was it, if made October 1st, in the name of Joseph Oteri alone? And why with over $3,500 firm-moneys in his hands, has he not paid it? How will the court now fix this liability upon the firm?

The next item of assets reads: "H. Terni owes— "$116.37." This was an over-payment by Oteri. It is difficult to see on what principle of justice this can be called an asset of the firm, equivalent to cash on hand, when it is a pure debit of Oteri's. Terni's compensation was fixed by contract at $60 per month with 8 per cent. on profits. Oteri can not be charitable at the expense of his partners; he admits (Rec. p. 207), that "H. Terni has "overdrawn $95.37 and I have notified him, that he could "not draw any more, and as he received my notice, "he has not come any more to the office, and I presume "he has quit." On p. 206, he is put down as owing $595.37—300= $295.37. He gets back before the great explosion, and writes more letters through December, 1884. (Pp. 162, 163.)

The next item reads: "S. Gioe owes $2,193.30." Oteri, on his direct examination (Rec. p. 159) says:

"After going around to different fruit-shippers, we "called on Mr. Gioe.

"Q. Who is we?

"A. Myself and Mr. Hector Terni. Mr. Hector Terni "was the guide, and I was the one following him. Mr. "Gioe told me, 'Mr. Oteri, I have heard of your good "reputation, I have heard that you have accumulated a "fortune, I have heard of your good name.' Says he, "'Mr. Oteri, *I will let you have one-half of my shipments.*' "Says I, 'Mr. Gioe, anything that you can do I will appre- "ciate.' Says he: 'Furthermore, Mr. Oteri, I will not "recognize any one of your firm but yourself.' Says I, "'Mr. Gioe, that is something I am surprised at.' Says "he: 'No more than what I am.' Says I: 'No matter; "make your shipments, and I will give you security the "same as any other house in New Orleans.' Says I: "'You can ship to me or to the firm. I will see that you "get entire satisfaction for whatever you ship to the firm "or to me; I am the responsible person to the firm, and "the firm is responsible to me.'"

Oteri thus testifies on May 17, 1886. Gioe's testimony is taken by plaintiff October 11, 1886. (Rec. pp. 52, 53.) Two letters were written by J. Oteri to Gioe, one on October 7, 1884 (not printed) and one on October 17, 1884, on Record, pp. 22, 23. If what Oteri states in his examination be true, the business transacted by him with Gioe was his own private business, done in direct violation of the implied good faith of his partnership-contract. He has made the debt his own and must suffer the loss, if any. He is in this predicament. Either his testimony is true, and the transaction is then a breach of the "*honeste vivere*"; if false, he makes the debt his own by his *fraud* on his partners. Oteri compromised this debt of Gioe's for $2,193.30, for 10,000 liras, say $2,000, on time as set forth on Record, p. 154, without authority. Nor does he tender the notes he took in compromise. This item should be erased. He could

not sue Gioe, unless he sued in his own name. After death of partner, or dissolution of partnership, no partner can sue in his own name until legally authorized, and gives security (Hennen's Louisiana Digest, p. 1133), and such should be the law everywhere.

Another reason is more striking. The usual advance on shipments of fruit from Sicily to the United States on joint-account or on commission, is three liras per box (pp. 75, 76); or at the most, four liras (p. 178). After Oteri and Terni had returned from their trip, Randazzo called at the office, and Oteri representing the business a poor one—

"I told him that, by opening a credit of three liras a "box, we could never lose during the business season of "the year, because they sent the fruit on commission. "It was not us that shipped the fruit, but they did it, "and with three liras a box, there would always be some-"thing left over to us.

"Q. Did Mr. Joseph Oteri say he had made a greater "advance than three liras a box on any shipment?

"A. He did not tell me whether he had advanced "three, four or five liras a box. He did not give me any "information." (Rec. p. 76.)

Even Oteri confirms this. Gioe—

"was a large shipper and we were anxious to get his "shipments, and *for an inducement, for policy sake*, we al-"lowed him to draw on one letter of credit *eight* liras a "box, and on another letter of credit for £500 for *four* liras "a box. We did that *for policy sake* to get his shipments.

"Q. That is, you and Mr. Terni?

"A. Yes, sir. * * * He did n't exhaust the first "letter of credit, and, therefore, did not draw against the "second." (Rec. pp. 181, 182.)

The printed record is silent as to any knowledge of this palpable fraud on the partners; and this "policy sake"

can hardly be made available in any event without conclusive proof.

In addition, before parting with Gioe, and in view of the startling discrepancy between his testimony and that of Oteri, the defendant's witness, G. Dell 'Orto, attorney. (Rec. p. 145) writes:

"Gioe, he is ready to make the shipment promised the "balance next season. For him any declaration is super- "fluous, as he is an honorable man. I have taken note "of his reputation."

What Oteri says of Gioe (Rec. p. 183, repeated p. 187) and Gioe's flat contradiction (Rec. p. 52) clearly demonstrates Oteri's entire incredibility.

The next item reads:

"G. Di Cristina owes $399.97. (Rec. p. 8.)

"He resides at Palermo, where he was born; is 51 "years old. 'I have no occupation. I live on my "money.' 'I know Joseph Oteri to have been irregular, "dissipated and dishonest.'" (Rec. p. 49.)

The correspondence between these two parties fully develops their personal characteristics, and as such is well worth perusal even in the translations from the illegible original Italian of the letter-book. Di Cristina writes from an hereditary intuition, coupled with a thorough experience of commercial affairs. He was never for a moment mistaken in his man. The ever tergiversating Oteri blows, brags, blusters. There is to be found in this Record not the slightest justification for Oteri putting this claim and that against Gioe into the hands of a lawyer except for his own account. From the moment of the institution of the suit in the State court, February 2, 1885, he liquidated the partnership as a tort-feasor pure and simple. He denied all need of a receiver and the right of plaintiffs to have a settlement of

the partnership under the direction of the court; all right of the plaintiffs to an injunction as prayed for; all right to a dissolution of the partnership; and in the very face of the court, he has proceeded as if the partnership-articles, and especially the third stipulation and covenant, was in full force.

The master finds that—

"The partnership should be considered as continuing "uninterrupted from 1st July, 1884, to the 2d February, "1885, at which date Oteri was called to answer in the "State court the suit of his co-partners for its dissolution; "that from the 2d February, 1885, Oteri had no authority "to enter into any new engagements for or on behalf of his "co-partners, but it remained his duty to conduct to con- "clusion all obligations and contracts made or com- "menced before that date."

Even if no fraud had been found against Oteri, this conclusion is too broadly stated. He could no longer act as agent for his partners, for they had cancelled their mandate by their suit. The termination of the partnership had already taken place. Its non-existence was an immovable fact. The suits are only for the purpose of having this fact judicially declared. Plaintiff's action is to rescind the contract and for a "*restitutio in integrum*"; not technically for a dissolution, except to have "the "legal liabilities of the firm paid and charged against the "said Joseph Oteri." (Rec. p. 3.) Oteri was a mere *pendente lite* agent *de son tort*, acting as a tort-feasor for the court and not for his associates, a naked intruder never having been authorized in any way and without having given security.

Most closely connected with G. Di Cristina is the item on page 9 in "Exhibit D," under the heading Randazzo & Di Cristina, reading:

"*To cash drawn*..... *$1,248.75*"

The facts in regard to this item are as follows:

On the formation of the partnership Randazzo and Di Cristina paid to Oteri $2,500 in this way. Randazzo mortgaged his property in New Orleans to Oteri, individually, for $2,500, receiving Oteri's check therefor in the same amount, but at once handing the check over to Oteri. (See Oteri's account of the transaction, Rec. p. 157.) This mortgage was made as a payment *pro tanto* of the share in the capital of the partnership. It was *partnership money* contributed by Randazzo and young Di Cristina; and as such received by the partnership (Rec. p. 80).

Oteri writes to G. Di Cristina (Rec. p. 15):

"We have been unable to send you any money either "in cash or letters of credit on London, simply because "our partner, Mr. Randazzo, is still dilatory and defec- "tive in the payment of his share of capital. The lat- "ter would, as capital, desire to surrender us a credit "of $3,700 which he claims to have against you. This we "can not under any condition accept, and you will surely "find it reasonable. It is necessary, therefore, to await the "arrival of Mr. Scalzo and Mr. Di Cristina to place every- "thing clear. Our Mr. Oteri, *in entirely private way*, says "that whatever may eventually happen, he intends, if "agreeable to you, to continue his commercial relations "with you; and even if the present firm was to dissolve, "you should not attribute any fault to Mr. Oteri for the "delay in remittances and credits, etc., and the blame "should entirely rest upon the said Randazzo," etc.

In Oteri's letter to the same person he says, October 10, 1884 (Rec. p. 20):

"Mr. Randazzo does not desire to put up his money and "absolutely disapproves the giving of cash advances to "you, because he claims a credit of $3,700 against you "equal to £750, and the £250 I gave you in Palermo, "forms a total of £1,000 cash. Therefore, neither he nor "I can understand why you need so much cash, especially "at the present moment."

The barefaced attempt now made by Oteri is to charge to Randazzo this £250. The exact amount, £246 16*s* of the bill of exchange, equivalent to 6,170 Italian liras, is evidenced by the receipt on Record, p. 204, from G. Di Cristina to J. Oteri & Co. The Italian lira is exactly equivalent to a French franc, one-fifth of a dollar nearly, or $1,254, or as the "Exhibit D" (Rec. p. 9) has it—$1,248.75.

Randazzo testifies he never received a cent from the concern after he put in his $2,500. (Rec. p. 78.) He certainly had no right to withdraw a dollar until the expiration of the first year of the partnership, stipulation sixth, paragraph second. (Rec. p. 11.) With the $3,700 which G. Di Cristina owed Randazzo, Oteri had nothing to do either individually or as a partner. It is a clear fraud in him to try to convert the advance of this money to G. Di Cristina, as for the account of Randazzo, thus *increasing*, if valid, the latter's debt to the former from $3,700 to very nearly $5,000, whilst Randazzo was evidently desiring to *reduce* it, by making it available in paying for his capital in the firm. Oteri told Randazzo nothing about this transaction, further than "that he "gave G. Di Cristina £200." (Rec. p. 79.) Oteri himself, in a very peculiar way, throwing much light on his own character, and his interview with the older Di Cristina, says, in his examination-in-chief (Rec. p. 159, at top):

"Mr. Randazzo told me to let you have all you wanted "to a certain limit. Says I, 'He told me that I could let "you have as much as $2,000, but I can not let you have "that much. If I had it I would let you have it, but I "have only got about £250 sterling, *for the account of Mr. I.* "*Randazzo.*' Says he, 'What will you do with the balance' "[the difference between $2,000 and the $1,248.75]? "Says I: 'Take my letters of credit for £2,000 sterling. "As soon as I can draw money on those letters of credit, "I will give you the balance.' * * *

"Q. How much did you give him?
"A. Two hundred and fifty pounds sterling *for account of Mr. I. Randazzo.*"

On Randazzo's cross-examination, he is asked:

"Q. Didn't you mortgage your property to Mr. Joe Oteri "for it [the first installment of capital $2,500]?
"A. Yes, sir.
"Q. And the second you paid?
"A. Yes, sir.
"Q. Didn't you authorize Mr. Joe Oteri to pay your "brother-in-law in Palermo, G. Di Cristina, all the money "that he (Di Cristina) wanted?
"A. No, sir.
"Q. Didn't you know that Mr. Joe Oteri advanced some "money to G. Di Cristina in Palermo?
"A. Certainly; he told me so himself.
"Q. Didn't he do it for your account?
"A. He didn't work for me.
"Q. No; that is not my question. Didn't he advance "this money to your brother-in-law, on your account?"
"A. No, sir." (Rec. p. 80.)

Scalzo brought with him a receipt from G. Di Cristina to Joseph Oteri & Co., for this very bill of exchange, and the firm received it (Rec. p. 32) on Scalzo's return to New Orleans in November, 1884. The court is now asked to believe, that Randazzo has, in some recondite way, not only paid his $5,000 capital, but also $1,248.75 in addition, for which he may have a claim on G. Di Cristina increased from $3,000 to $4,248.75, when he was all the time, according to Oteri's own declaration in writing, desirous of getting money *from* Di Cristina to complete his capital. The bill for £246 16*s.* was part of the very money advanced as capital by Scalzo and Randazzo & Di Cristina, and as such, held by Oteri for the firm. He could only employ it for the use of the firm. He was wholly powerless, even under a full power-of-attorney

from Randazzo, to pledge the firm's money for any purpose but the firm's. He had not advanced a dollar to the firm until November 15, 1884, and he deliberately deducted from his own $5,000 contribution this $1,248.75, when he started the firm's bank-book. (Rec. p. 197.)

Under these facts, and the further fact that he, as a member of the firm, has settled with Di Cristina, and Randazzo has been left without a vestige of legal right against any one but Oteri himself, how can Oteri escape the consequences of his acts?

Finally, on May 17, 1886 (Rec. p. 163) Mr. Oteri shows the letter-book to Mr. Berthoud (the interpreter) who translates the letter of Joseph Oteri & Co. to Gaetano Di Cristina, Palermo, one of the letters which he speaks of as being written by himself, *for the best interest of his partners.* In this letter he says:

"By means of Mr. V. Scalzo, we received a receipt of "£246 16*s*, which amount was advanced to you there in "Palermo, and for which we hold here responsible our "Mr. I. Randazzo. Said receipt is perfectly correct. "Keeping you without money is not our fault, but a "matter arranged that we should send no money to any "one in advance."

See also Dell 'Orto's translation of same letter on p. 153 of Record. The very next day, he deducts, *for the best interest of the firm,* the item $1,248.75 *from his own contribution of capital; charging it to Randazzo and thus giving himself credit for it.*

The next and last item in "Exhibit B" (Rec. p. 8) reads:

"*Bills receivable, J. Zucca's note..... $2,320.75.*"

Bearing in mind that about October 7, 1884, Joseph Oteri, individually, had pledged to the Union Bank $10,000 worth of premium bonds on which letters of credit had issued for £6,000 (Rec. pp. 15, 19, 20) we find, Jan-

uary 24, 1885, a several call of $1,500 for more capital made upon Scalzo and Randazzo and Di Cristina, by J. Oteri in his own name. (Rec. p. 193.) The next date disclosed by the Record is February 2, 1885, the suit in the State Court for the rescission of the partnership. (Master's report, Rec. p. 236.) The sales of fruits by steamers "Edgar" and "Irthington" took place January 30, and February 9, and the "Bessie Morris," February 26, 1885. (Doc. C, Rec. p. 45.)

The transaction out of which this Zucca's note arises was the sale of one or more consignments of fruit to the firm. Onorato was the auctioneer. Oteri notified him to sell only for cash, and he notified all purchasers. No exception was made—even his former associates in business, Randazzo and Scalzo, had to pay cash for what they bought. In spite of this, Oteri extended credit to Zucca, and by his folly and fault lost the whole debt, which he now tries to fasten upon the partnership; and notwithstanding he had declined to attend the sale as importer, and had given precise directions that all sales should be made for cash, and that his partners had been compelled to give orders to the auctioneer to sell "for account of "whom it may concern," under the instructions for a cash sale. (Onorato, Rec. p. 69.) Zucca was insolvent and in bad credit at the time and utterly unworthy of trust. Under such circumstances, "he that trusts must pay." (*Gracie* v. *Palmer*, 8 Wheat. 605, 635.) Even Oteri's own testimony in this transaction gives a very lame account. His friend, Dell 'Orto, seems to have joined in the recommendation to Oteri to trust Zucca; and yet, with full knowledge of all the facts, has characterized the note as an asset of the partnership. "*Ex uno disce omnes.*"

One item appearing in the profit and loss account (pp. 8, 9) read: "Interest, $123.73." What was Oteri paying interest for? If his testimony is worth anything, he

had advanced the firm $10,000 worth of premium bonds, and had a paid-up capital of $15,000 in addition. Now he winds up the partnership and gets out his premium bonds, and reports cash on hand $3,657.26.

The next item reads:

"*M. Costarelli & Son* (Rec. p. 9)..... ..... *$315.56.*"

The figs were bought in Messina on the order of Joseph Oteri, and confirmed by his letters of October 7 and 17, 1884, as appears by Record, pp. 41, 18. The account was passed to the debit of profit and loss for $315.56. Oteri gives an incredible history of the transaction (Rec. p. 186) as to the mark, how they were paid for, the amount of the loss, time of arrival and sale, etc. On Record, p. 228, he is asked on his cross-examination,

"Q. What did you do with the claim that you settled
"for as against M. Costarelli & Co.?
"A. I abandoned it as it was not worth fighting."

This is a misrepresentation. See Costarelli's letter of February 19, 1885, which makes the case clear. The loss was Oteri's own, and can be saddled with as little propriety on the firm as on the Costarellis. (Rec. pp. 138, 139.) See also Costarelli's letter, March 3, 1885. (Rec. p. 140.)

"Q. What did you do with the claim against Mr.
"Terni of $115.37?
"A. I never claimed it; it is in *statu quo.*
"Q. What have you done with the alleged claim against
"John Zucca of $2,320.75?
"A. He went into insolvency, and I have got his
"thirty days' note. If there was any way of getting the
"money, I would do it with pleasure." (p. 228.)

Oteri's philosophy is eminently Hudibrastic. It would be cruel to deprive him of the possession of this note. We hardly think either party will need the production in

this court of Zucca's insolvent proceedings, *res ipsa loquitur*.

We now reach the items in the accounts under the heading "Exhibit D," "statement showing what is due each partner," naming Vincenzo Scalzo (Rec. p. 9):

To cash drawn.....	$2,197.33
By cash received.....	1,026.93
	$1,150.40

Scalzo swears positively he never received a cent from the firm, when interrogated as to the $2,197.33 (Rec. p. 31): "I don't know whether he has paid them for me, "but I know that I never received any money." It appears, however, a firm existed in Milazzo, Pasquale Scalzo & G. Accetta. The partner, Vincenzo Scalzo, Pasquale's brother, went to see him after parting with Oteri and Terni, and seems to have passed some time there. But Oteri and Terni went to Milazzo "on our way go-"ing to Malta, but we didn't go ashore" (Rec. p. 187), and "made no business arrangements there." V. Scalzo, on his return to New Orleans (he left Palermo October 6, 1884, on the "Archimede" *via* New York (Rec. p. 25) and St. Louis) (Rec. p. 110); reached the latter place "three days ago," *i. e.* October 27, 1884. His two letters, introduced by Oteri (on Rec. pp. 174, 175) show that he reached New Orleans (going down by night, and evidently by rail) at the earliest, November 9 or 10, 1884. On November 14, 1884, Mr. Scalzo paid his $3,000, and Mr. Randazzo paid his $2,500. "After that "was done, young Di Cristina and Hector Terni com-"menced writing to the parties that all the difficulties be-"tween Mr. Oteri, Mr. Scalzo and Mr. Randazzo had been "amicably adjusted, and that the thing stood as it orig-"inally was, according to our circulars sent them, for "which the letters are here." (Oteri on Rec. p. 162.)

It was thus apparent that everything stated by Oteri as to Scalzo, prior to this date in November, is pure fabrication. See also his letter, November 3, 1884 (p. 206). V. Scalzo says he reported to Oteri what he had done for the firm with Scalzo & Accetta on his return, and asked him if he was satisfied.

"He said 'yes.' I then said, the goods were to be ship-
"ped on joint account, and I told him we ought to send
"$1,000 to these people, and Mr. Oteri sent them $1,000,
"and then afterwards when Mr. Oteri saw the goods—
"that is, oranges and lemons—he said, 'I don't want any
"of these goods on joint account; *if they want*, they can
"send them to me *on commission*.' I had already writ-
"ten to these people that the goods were to be shipped
"on joint account. Then Mr. Oteri wished to dissolve
"the co-partnership and cancelled the letters of credit,
"which had been open to them. The letter of credit
"had been opened to the Bank of Barcelona for this
"firm of Pasquale Scalzo & G. Accetta, and for any
"person who would ship us goods, but it was understood
"to be Pasquale Scalzo." (Rec. p. 29.)

It is indispensable at this point to follow the movements of Oteri. He left New Orleans after the partnership had been formed, and Randazzo had paid one-half of the contribution of Randazzo & Di Cristina to the partnership, to wit: $2,500. He stopped a few days at St. Louis, where V. Scalzo paid on account of his quota to the partnership, $2,000. Oteri had drawn out of his own bank account before leaving New Orleans, $1,300, July 10, 1884. He must have had also in his possession other funds on his person or under his control, as will hereafter appear, to a considerable amount; for the partnership-agreement tacitly assumes him to be, and actually constitutes him, the capitalist and sole leading and dominating manager of the concern. And he *assumes* (Rec. p. 157) likewise all the expenses of the

trip, as the only purse-holder thereof, which was to initiate and carry on the firm business at its domicile, which business was "for the purpose of carrying on a "general commission business and the importation of "fruit from Europe and for all matters and things thereto "appertaining, under the following stipulations and "conditions," etc. (Rec. p. 10.) This, evidently, embraced the receipt of "fruit" under a fair and liberal interpretation of this term, including even sulphur as an agricultural product of Sicily. We know not the exact date when Oteri and Terni reached New York and Liverpool, and what they did seems to have been entirely with the firm of Phelps & Co. and their clerks. Some letters in the Record give indications of Oteri's movements on his return with Terni to the United States.

Filiberto writes to the firm on August 28, 1884, from Palermo to Messina (Rec. p. 86), showing the two, Oteri and Terni, on their way home; and Tarro, on September 18, 1884, writes from Messina to London, acknowledging receipt of a letter from the firm the 12th of same month, "I have learned with pleasure, that you are well and "ready to leave [for] New York," etc. (Rec. p. 97.) September 19, 1884, Filiberto writes to the firm: "We "are in receipt of your telegram from Liverpool, Glyn "Mills—also of your valued favors," etc. (Rec. p. 96), to which Oteri personally replies, October 7, 1884. (Rec. p. 151.) In these two letters, the treachery, double-dealing, secrecy, deceit and fraud of Oteri are fully revealed. It is impossible from the facts proved to believe that either Scalzo or Randazzo had any information whatever of the contents of the books of the firm, until the developments made by Allessi, after November 15, 1884. Terni preceded Allessi, and also succeeded him and remained until after December 20, 1884. This is shown by his receipt of money on that day, check drawn

by himself and signed by Oteri. (See Rec. p. 219.) It is also in evidence that Terni owed, November 3, 1884, $95.37 (Rec. p. 207), and June 1, 1885, $115.37. (Rec. p. 7.) In the Record as printed, we then find that the trip of the four with which this ill-fated partnership began, was both for business and pleasure; and with these two intents, the four persons engaged therein were really actuated. Oteri says that he never authorized Scalzo to enter into any arrangements of a business nature with his brother Pasquale at Milazzo; that Vincenzo Scalzo went to Milazzo to see his relatives and not with any view to business. That all the expenses of the trip were incurred by the firm; but Scalzo went to Milazzo to see his relatives, not for the interest of the firm (Rec. p. 174), and when Scalzo came down from St. Louis to New Orleans (November 10, 1884) he reported what he had done with his brother's house at Milazzo both to Oteri and Randazzo & Di Cristina, Terni also present, after the amount of his expenses had been refunded to him. (Rec. p. 168.) Scalzo claims that he "made arrangements with them [Pasquale "Scalzo & G. Accetta] to ship fruit to the firm of Joseph "Oteri & Co., and when I returned I told Mr. Oteri about "this arrangement, and I asked him if he was satisfied. "He said 'yes.' I then said the goods were to be shipped on "joint-account, and I told him we ought to send a thousand "dollars to these people, and Mr. Oteri sent them a "thousand dollars, and then afterwards when Mr. Oteri "saw the goods—that is, oranges and lemons—he said 'I "don't want any of these goods on joint-account. *If they* "*want* they can send them to me *on commission*.' I had "already written to these people that the goods were to be "shipped on joint-account." (Rec. p. 29.)

Oteri's account is materially different; but it is an after-thought badly worked up for the purpose of casting an unfounded claim upon Scalzo, both as a partner with

Oteri *et al.*, and as likewise a partner with Pasquale Scalzo & Accetta. In round numbers, V. Scalzo contends that the partnership of J. Oteri & Co., after having accepted and ratified his agreement with his brother's firm, remitted them, at his request, $1,000, and that he, himself, afterwards remitted them another $1,000. Oteri says, both sums of $2,000 were remitted by his firm of J. Oteri & Co., and charged to V. Scalzo. But only one bill of exchange is produced by Oteri (Rec. p. 169) for £200, Union Bank favor J. Oteri & Co., endorsed over to V. Scalzo. Oteri, in same connection (Rec. p. 170, towards the top) "says I, here is the amount I gave to "Mr. G. Di Cristina for account of Mr. I. Randazzo; be- "tween that amount and other little amounts, $1,200, "and also $1,250 that I took for my account; here is "the amount I gave you, Mr. Scalzo, $1,000; I paid to "Mr. Fazio for your account and other small amounts "$250 for traveling expenses." This was on the eve of the explosion, when Oteri wanted a further contribution from his partners of $1,500. (January 24, 1885, Rec. p. 193.)

But it would be vain, with the lights before the court in the way of oral evidence and the entirely fictitious and forced book-keeping, to get at the real facts of these complicated relations between parties acting as reciprocal agents for each other. Oteri's testimony is erroneous in many particulars, and is very much mixed as to dates; this latter fact he freely admits. "He puts the cart before the mule" (p. 174). "I may have made mistakes in dates" (p. 199). He contradicts himself repeatedly. When cross-examined, he misrepresents *over and over again* the date when he first began to keep a bank account in the name of the firm (November 15, 1884, Rec. pp. 196, 197, 198); he denies making any arrangements with anybody in Sicily for the purpose of doing business on joint-account

individually (p. 207), but is confronted with his own letters and then he says that it was done "*for the benefit of the "firm.*" At other times, he says: "*It was a letter of mine, "not what we call a true letter, but an assumed letter for the sole "purpose of soliciting consignments and realizing from them.*" "*It was all policy sake on my part, and that was cancelled "afterwards.*" (Rec. p. 208.) Indeed when we regard this appellant in the light of an international merchant, and the flippancy with which he speaks of "*false letters,*" "*policy sake,*" "*benefit of the firm,*" "*circumstances alter cases,*" "*feasible business deals,*" and his avowed ignorance of his mother-tongue and the language of his native country, and the way in which he speaks of it; above all, the gross, unscrupulous way in which he strives to benefit from the blind, untutored confidence reposed in him by his partners, we are not at all surprised at the decree of the lower court, based as it is on an entire want of confidence in the defendant's case, as he himself represents it. We have seen how he is striving to impose on Randazzo in his charge to the firm of Randazzo & Di Cristina of $1,248.75. May he not be playing upon his partner Scalzo in the same way? and repeating his little game attempted in Costarelli's case in regard to the figs?

The record-evidence points in this direction. A draft for £200 was drawn by Union Bank on Baring Bros., favor of J. Oteri & Co., endorsed by J. Oteri & Co., then by V. Scalzo, then by J. Oteri to be paid to the order of Andria Fazio of Barcelona, New Orleans, November 25, 1884. (Rec. p. 34.)

Previously, on October 6, 1884, V. Scalzo in Palermo wrote to J. Oteri & Co., New Orleans, that he was on that day to leave for New York—

"And then I will go to St. Louis, and then your "place. * * * I have been at Milazzo, from where "we will receive fruit by first vessel." (Rec. p. 110.)

On October 16, 1884, Pasquale Scalzo writes to his brother Vincenzo, from Milazzo, evidently for the firm, the defendant producing it:

"At 3 o'clock last night, we finally finished loading the "fruit on the S. S. 'Jason' for New Orleans." (Rec. p. 108.)

Again, December 19, 1884—

"I answer, although late, your letter of 15th ultimo; "have been awaiting from day to day the arrival of some "steamer as all my boxes were ready; yesterday the S. S. "'Edgar' arrived, on which I shipped 931 boxes lemons "and oranges; yesterday we delivered the bills of lading "and other documents to the Bank of Barcelona to be "promptly remitted you," etc. (Rec. p. 123.)

On December 22, 1884, Fazzio Sotti, for the bank, acknowledges receipt of £200, in J. Oteri's letter of November 25, for account of V. Scalzo, which the bank passes to his credit, not comprehending "the assumed letter" (not a true one) written by Oteri "for a purpose" quite other than that V. Scalzo intended when he handed him the money to buy the draft. (See Record, p. 169, at top.) Then on p. 127 follow the bank's five letters of 15, 17, 18, 19, and 24 December, 1884, but not a word relative to another £200, or draft for $1,000.

One thing is quite certain: There was a loss on the shipments of Pasquale Scalzo through the bank of Barcelona; and that Oteri has charged a certain deficiency to Scalzo, after disclaiming any participation in the risk when he saw the condition of the fruit on its arrival. He was striving to *mend his hold;* he was making a repetition of his unsuccessful experiment with Costarelli; he was trying to change the legal relations by another fraud on his customers and partner. He had knowingly sent the bank $1,000 of Scalzo's money; he had sent the

bank a letter of credit to enable them to make advances; he had received various consignments through the bank and sold them in due course; when the explosion took place among the partners, he recalled his letter of credit to the bank. The letter of credit for £1,000 was acknowledged as received by the bank, letter Barcelona, December 15, 1884. On December 17, 1884, the bank writes:

"Messrs. Lazard Frères & Co. telegraphed us to-day. "We annul credit, confirmed letter 5th inst. We await "your explanations on the subject, having already made "engagement with several shippers." (Rec. p. 128.)

The very consignment he strove to repudiate as on joint-account, he treated as a consignment on commission in the teeth of the very arrangements that had been made for the firm, and for which, he was well aware, the Bank of Barcelona held the partnership responsible. Instead of promptly denying the shipments to be on joint-account to his European correspondents, he receives the goods, pays the freight, allows Scalzo to take the oranges to St. Louis to reduce the loss to a minimum, and then, to crown all, writes to him to remit the proceeds of the oranges, makes out the account-sales after getting the proceeds of Onorato's sales at auction, taking care to deduct all charges and commissions, charges the difference between what he has paid out for advances and received for proceeds of sales and remits the proceeds; exactly as he did in the case of the "Jason" with the same parties. He received the consignment, there was a balance to the credit of the shippers. He don't remember how much it was.

"Q. What did you do with the price realized from the "sale of that fruit?

"A. I went and got exchange and sent it to the ship-"pers." (Rec. p. 213.)

We have thus gone into the merits of the appellant's proposal to the court below to settle this partnership, which the master had to a certain extent approved. But the contract of partnership when entered into was a *leonine* contract, *i. e.* grossly one-sided. The only active partner in it was Oteri; he was to be "*the manager with* "*exclusive control and direction of its affairs*"; with sole power, "*alone entitled to sign the name of the firm*"; "*and in* "*the event of any other partner violating this agreement*" his interest "*shall at once cease and determine.*" (See Section third, Rec. p. 10 of this *leonine* contract.)

It can hardly be said that the partnership ever had a beginning. Oteri at once assumed full control of all the subscribed and paid-in capital of his co-partners and used it as his own and in his own name. He never opened a bank account in the name of the firm until November 15, 1884, and before that time he had inextricably mixed up his own and the firm's moneys; and when he did open the account he omitted depositing his own capital of $5,000 in its entirety, which, indeed, was never actually invested in the business.

"Q. Then your $5,000 was put for the first time on "the 15th of November, 1884?

"A. Yes, sir; but my collaterals were sufficient." (P. 213.)

The judge below could see nothing in the facts but the pure arbitrariness of Oteri; and all that he was sure of was that the only money disbursed "for the benefit of the firm" was the expenses of the trip with which the partnership began. Oteri not only never put in his quota of the capital, but claims now that he pledged $10,000 worth of his own premium bonds for a very large amount (at least $30,000) of letters of credit, and his so-called commercial books contain not the slightest

entry how the bonds came into the business or how they got out. Though Oteri was in open default in complying with his agreement as to contribution of capital, he never has complied with his special undertaking that "books of "account shall be kept in which all the dealings and "transactions of said firm shall be *entered from day to day* "*and fairly written*, from which trial-balances shall be "taken monthly"; but no book of original entries has been produced, but a set of books from which nothing can be learned and no trial-balance can be made, without the oral explanations, dictations and *ex parte* suggestions of the wrong-doer himself. The first trial-balance (Rec. p. 206) presents a surprising spectacle. It contains fifteen items. Only three of them on debit side can by any possibility be balances, to wit: Cash, expenses, and bills receivable, and one on the credit side, profit and loss. This is evidently a false trial-balance. But even if we take it as correct on December 31, 1884, the court will notice how it tends to confirm the views hereinbefore expressed as to Terni's, Avendano's, Zucca's, Gioe's, Randazzo's, Zucca's, Costarelli & Co.'s, and Vincenzo Scalzo's accounts.

But not only is it an untruth that Oteri ever put into the concern and deposited in bank his quota of capital, but his own accounts even now show a gross, open, persistent violation of his co-partnership, even if he had faithfully complied with this part of his agreement. The contention of the appellees is that they have faithfully complied with their part of the *leonine* contract; and that they have never violated it. The notarial act on Rec. p. 10, in its second paragraph reads as follows:

"The capital invested in this co-partnership consists of a "sum of $15,000, in U. S. currency, and has been con- "tributed * * * $5,000 each of [by] said Oteri and Scalzo, "and the remaining $5,000 by said firm of Randazzo &

"Di Cristina. It is hereby agreed that in the event more "capital should be needed at any time during the exist- "ence of the contract to carry on said business, the said "Joseph Oteri shall, if he deems proper and not other- "wise, furnish same surplus capital thus needed, and "shall be entitled to and charge interest thereon at the "rate of eight per cent. per annum." (Section 2d, Rec. "p. 10. Then section sixth, paragraph 2d.) "Neither the "capital invested in said partnership nor the profits "arising therefrom shall be withdrawn by said co-partners "during the continuance of this contract, save and ex- "cept that each of said partners shall have the right of "withdrawing at the end of each business year one-half "of his share in the profits of the concern."

The $10,000 worth of premium bonds belonging to Oteri individually were pledged to the Union Bank by him in his own name for the benefit of the firm, October 7, 1884. He says so over and over again. He entirely repudiates the idea, and this throughout the entire Record, that he was acting for himself, but always for his partnership. He seems to be utterly unconscious of the effects of his testimony, which constitute by a necessary conclusion of law, the premium bonds a constituent portion of the capital of the firm, which under the partnership-articles, he had no right whatever to withdraw from the firm, without the consent of his co-partners.

Record, p. 170, Oteri says, talking to his partners:

"At that rate, gentlemen, we can not do business. If "you wish to continue the business, you are satisfied "to do business that way, so am I. Therefore I want at "least $1,500 from each of you. I will put in the same "amount what the others will do [taking advantage of "his wealth, he being the only partner who could ad- "vance money to the firm and get eight per cent. for it]. "* * * Gentlemen, I must have some money; other- "wise we can not continue this business. My partners "asked me if I would not advance the money and charge

"eight per cent. interest, as I agreed to do in the articles of "co-partnership. To this, I told them that I could not agree "to do so. My partners then said: 'Well, you agreed to "'do so.' Says I, 'Gentlemen, you are mistaken; if I "deemed it proper I would do so. This is my ultimatum. "I want what I demand because it is needed.'" (Rec. p. 170.)

This conversation gave rise to the two letters of January 24, 1885, from Oteri to his partners. (Rec. p. 193, on his direct examination.) Again on his cross-examination:

"Q. Everything, then, from the commencement of the "partnership, went on in the name of Joseph Oteri & "Co.?

"A. Yes, sir.

"Q. Except the letters of credit?

"A. Yes, sir.

"Q. And except the letters that you wrote the 7th of "October?

"A. Yes, sir; these letters I wrote as the books show "in my own individual name, and no one had authority "to draw on the bank but myself individually; *I was* "*safe in that deal.*" (Rec. p. 197.)

That Oteri was acting for the firm in his pledge of premium bonds, appears throughout this case. He seems to repudiate all notions to the contrary, *e. g.:*

"Q. Did Mr. Gioe say that he would not do any busi- "ness with Randazzo or Scalzo?

"A. He told me he would not do any business for the "firm. He didn't mention any name.

"Q. Well, why did he afterwards do business with the "firm?

"A. Because he had received letters of credit from me "individually.

"Q. Why did he, after having received the letter of "credit from you individually, make shipments to the "firm?

"A. He made shipments to order.

"Q. Why did you do business with him in the name "of the firm, when your letter of credit was Joseph Oteri "individually?

"A. Because I was senior member of the firm, and as "things were not satisfactorily arranged I did so tempor- "arily for the benefit of the firm to solicit consignments." (Rec. p. 198.)

And on p. 207, Oteri asserts over and over again, that all he did in his own name was *for the benefit of the firm.* See also pp. 200 and 201, as to what took place between Kohn and him; and the letters of the Union Bank to the firm, signed Kohn, Pres. (On Rec. p. 134.)

Without the premium bonds, Oteri could get no letters of credit, unless he paid for them in cash; but he had exhausted all the cash funds of the firm, in Europe, by purchasing other letters of credit in the firm name (Rec. p. 179) and paying expenses of the trip. The premium bonds were just as much "capital" as the $5,000, his quota of the community fund. In pledging them for the purposes and business of the firm he was acting in strict accordance with the partnership-articles; and which "he deemed proper, and not otherwise." He subjected his partners and himself to the full liability of their firm, jointly and severally towards the bank, for all the letters of credit they issued—an obligation *in solido* under Louisiana law. He had not a vestige of right to cancel these letters of credit as sole manager of the firm's business, in order to commit a fraud upon his partners and the creditors of the firm, in an effort to get possession and control of partnership property for his own private purposes. He contributed, along with his promised quota, his commercial credit of which he seems so proud, and these bonds were one of the principal elements of this credit; for on the deposit of $10,000 worth of them, the bank granted a credit of over $30,000.

The partnership-contract is the law of the case, which neither partner can violate.

But Oteri goes further. It certainly never was the intention either of Scalzo or of Randazzo and Di Cristina to withdraw any part of their capital. We have shown that Randazzo never did anything of the kind nor is it claimed that Di Cristina erred in this way. And it is by no means proved that V. Scalzo has done more than this young Di Cristina, *i. e.* become indebted to the firm for his share of the expenses of the European trip. But in addition to Oteri's withdrawal of $10,000 premium bonds above discussed, he judicially admits he has withdrawn cash from the firm, $1,465.07; and even on his own showing (Rec. p. 9), has less coming to him than either of his partners. He has been in the perpetual violation of his duties as sole manager of the firm ever since he received his own check for $2,500 from Randazzo, early in July, 1884; certainly before the four set out on their European trip. Even the balance-sheet of December, 1884, shows him to have withdrawn, contrary to the covenant, $1,250 from the concern, and of which he gives not the slightest account. (Rec. p. 206.)

This series of frauds on his partners gave rise to this suit for a rescission of the contract of partnership, and was the foundation of the decree of the Circuit Court. We have discussed the case at this unwonted length, in view of this immense and very tangled Record, of which only a portion has, by consent, been printed.

The law of this case seems to us to be plain. We were bound to prove to the satisfaction of the court, the question of FRAUD in Oteri as set forth in the pleadings, as found by the judge in the court *a qua*. In support of his decree we have adduced herein the facts at great length